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TOWNSHIP OFFICERS' GUIDE.

CHAPTER I.

APPRENTICES.

Who may be bound.—Male persons within the age of twenty-one, or females within the age of eighteen years, may be bound to serve as clerks, apprentices or servants, until they arrive at those ages respectively, or for a shorter period, in the following manner. 3118.

When trustees may bind.—The trustees of townships may bind out any orphan, destitute child, or the child of any person who does not provide for the same. The child may be bound to a master or mistress, or to an orphan asylum incorporated under the laws of Ohio, with the consent of the managers of such asylum. 3119, 3135.

The indenture, by whom signed.—The indenture of apprenticeship is required to be signed and sealed by the father, or in case of the death or inability of the father, by the mother or guardian, or in case of an orphan or destitute child, by the trustees of the township, of the one part, and by the master or mistress, or the directors of the orphan asylum, of the other part. 3120–3135.

Statement as to age and term of service.—It is required that the indenture contain a statement of the age and time of service of the minor, and if such age be unknown that it shall be inserted according to the best inform

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IN THE

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WITH

NUMEROUS FORMS AND ANNOTATIONS OF DECISIONS.

SEVENTH EDITION.

THOROUGHLY REVISED TO CONFORM TO EXISTING LAWS.

BY

HIRAM D. PECK.

CINCINNATI:

ROBERT CLARKE & CO.

1891.

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H. D. PECK.

CINCINNATI, *September* 30, 1891.

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bad, which statement in relation to the time of service, is to be taken and deemed as the true age of the minor.[1] 3121.

Other covenants of the indenture.—It is also required that the indenture shall contain a covenant on the part of the master or mistress to send the minor to a common school for at least twelve weeks in each school year, during the apprenticeship, after the minor is eight years of age, and at the expiration of the term of service, to furnish the minor with a new Bible and two good suits of clothes; and it is provided that all money or property stipulated to be paid by the master or mistress, shall be secured to and for the sole use and benefit of the minor.[2] 3122.

When bound to an orphan asylum.—If the child be bound to an orphan asylum, it is requisite that the indenture provide that the minor shall remain in the asylum to be supported thereby and subject to the control thereof, until such time as a suitable home or place is found for the minor, when the officers of the asylum may bind out the minor by indenture, or such other contract as they may deem most for his or her benefit and interest. 3135.

[1] The omission in an indenture of apprenticeship of a covenant that the master should teach the apprentice to read and write, though required to be inserted by the statute, does not render it void so that the master is released from the covenants inserted, nor does the omission of the age of the apprentice. Such an indenture is not void in law, because signed by the infant, his father consenting. The privilege of the infant is for his benefit, and can not be used against him. Francis *v.* Thompson, Tappan, 248.

[2] Where an indenture of apprenticeship witnessed that "Jacob Criss, son of John Criss, aged, etc., by and with the consent of the said John Criss, bound himself, etc.," and it was signed and sealed by both, John Criss was not liable in an action of covenant for his son's leaving his master before the expiration of the term. Campbell *v.* Criss, Tappan, 289.

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indenture, unless a covenant to that effect is contained therein. 3134.

Record of Indenture.—It is the duty of the master or mistress, or directors of the orphan asylum, to cause the indenture to be recorded by the township clerk within three months from the execution thereof, and in case of failure to do so, the apprentice is to be discharged from service, and the master or mistress will remain liable upon the covenants of the instrument for the payment of all money or property stipulated to be paid.[1] 3123.

Clerk to record, and his fees therefor.—It is the duty of the clerk to record all such indentures in a book to be kept by him for that purpose, and to furnish certified copies of the same when demanded, for which service he is entitled to receive ten cents for each hundred words from the party recording the indenture or receiving the copy. And the clerk is liable in a penalty of one hundred dollars, to be recovered in the name of the State of Ohio, for the use of the township, in case he neglects or refuses to perform his duties in that behalf, and is also liable to the party injured.[2] 3124, 3125.

Trustees and parents to inquire as to usage of apprentice.—It is the duty of all parents, guardians, and trustees of townships to inquire into the usage of minors bound as aforesaid, and to defend such minor from the cruelty, neg-

[1] Under the act of 1824, the omission of the master to record an indenture of apprenticeship, does not make the indenture absolutely void so as to avoid his covenants, though the apprentice might avoid it. *Semble*, that the time of recording is only directory, and that when recorded it will be valid. But the plea that it was not recorded within three months, is a bar, and a demurrer to it must be overruled. The facts must be set up in a reply. Haber *v.* Heis, Wright, 19.

[2] The omission of the master to have the indenture recorded within three months from its execution, according to the "act concerning apprentices and servants," passed March 8, 1831, does not discharge the apprentice nor entitle his parent to a decree in *habeas corpus*. *Ex parte* Newman, 1 W. L. J. 168.

lect, or breach of covenant of the master or mistress; and they, or the minor, by his or her next friend, may complain to any justice of the peace of the township, who is required forthwith to summon such master or mistress to appear before him, and if he can reconcile the parties to each other, may make such order as right and justice require.

Trial by justice and jury.—If the justice should be unable to effect an amicable settlement of the matters in dispute, he is required to summon a jury of five men, and proceed to try the cause. Verdict and judgment may be rendered against the master, or against the party instituting the proceeding, whether parent, guardian, or trustees, and the losing party will be liable for the costs.

If the verdict be against the master, the jury will assess the damages to the apprentice in money, and the same may be collected with the costs, by execution, in the usual manner, and the indenture will be void from the date of the judgment upon such verdict. For a more complete statement of the proceedings necessary in such cases, and for proceedings in case of runaway apprentices, and the like, consult the Revised Statutes, 3126–3133 inclusive.

Dissolute apprentice may be tried.—In case the conduct and habits of the apprentice become immoral and dissolute, the master or mistress may institute a like proceeding before a justice, making the parent, guardian, or trustees, defendants to the action; and if the verdict be for the master, the apprenticeship will be at an end, and the indenture void from that time. But the master must, in any event, pay the costs of such proceeding.[1] 3129.

[1] In suit on covenant in an indenture of apprenticeship for a breach by the apprentice leaving the service, it is competent to show, in mitigation of the damages, improper treatment of the apprentice by the master. The statute giving a summary remedy in such cases for improper treatment is only cumulative Where the guardian joins in the covenant for continued service, though not required to do so, he renders himself liable. Berry *v.* Wallace, Wright, 657.

CHAPTER II.

ASSESSORS.

Election of.—At the annual election, held on the first Monday of April, an assessor for the township is to be elected; or if the township is divided into two or more election precincts, then an assessor is to be elected for each precinct. 1448.

Appointment by county auditor.—If the assessor elect fails to give bond and take the oath of office within one week after his election, the office thereby becomes vacant, and the county auditor is required to fill the vacancy by the appointment of an elector of the township. The clerk is required to notify the auditor of the fact as soon as the assessor has qualified, and unless the auditor receives such notice on or before the third Monday of April he is to regard the office as vacant, and fill the same as aforesaid. 1518, 1519.

Bond and oath of office.—It is required that the assessor, before entering upon the discharge of his duties, shall give bond with two or more freehold sureties, approved by the trustees, in such sum as they determine, payable to the state, and conditioned for the faithful and impartial discharge of his duties according to law—which bond, with his official oath indorsed thereon, is to be deposited with the township treasurer. In case of appointment of an assessor by the county auditor, the amount of the bond may be fixed and the sureties approved by the auditor or trustee. 1517.

No. 2. Form of Assessor's Bond.

Know all men by these presents: That we , as

principal, and , as sureties, are held and firmly bound unto the State of Ohio, in the sum of dollars, to be paid to the State of Ohio aforesaid, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents.

In testimony whereof, we have hereunto set our hands, this day of , A. D. eighteen hundred and

The condition of the above obligation is such that, whereas, the said has been duly elected assessor of[1] township, county, and State Ohio, for the term of one year from the day of April, A. D. , and until his successor is elected, or appointed, and qualified.

Now, if the said shall faithfully and impartially discharge his duties as said officer, according to law, then this obligation will be void; otherwise it will be and remain in full force and effect.

The sureties on the above bond approved by us:

Trustees of said Township.

The State of Ohio, County, Township:

Before me, , clerk of said township, personally came , who, being duly sworn according to law, says that he will support the Constitution of the United States and the Constitution of the State of Ohio; and that he will faithfully discharge his duties as assessor of township, county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

[1] If the township is divided into precincts, here name the assessor's precinct and township. If not so divided, name here the township only.

Sworn to before me and signed in my presence, on this day of , A. D. 18 .

——— ———,
Township Clerk.

List of property.—It is required that each assessor shall make a list and valuation of all taxable property in his township now or hereafter taxable by any law of this state, and discharge such other duties as may from time to time be imposed upon him by law. 1520.

Statistics to be gathered by assessor.—It is the duty of the assessor, annually at the time of taking the lists of personal property, to take from each person, company, and corporation in his township or precinct, the statements following, verified by oath, for the preceding year: 1522.

Agriculture.—The number of sheep killed by dogs, and their value, and the number of sheep injured by dogs, and an estimate of the amount of damages by such injury; the number of acres put in wheat, rye, barley, corn, oats, and buckwheat, and the number of bushels of each produced; the number of acres in timothy and other grass, except clover, and the number of tons of grass and bushels of seed produced therefrom; the number of acres in clover, the number of tons of hay made therefrom, the number of bushels of seed obtained therefrom, and the number of acres of clover plowed under for manure; the number of acres planted in tobacco, and the number of pounds obtained therefrom; the number of acres put in flax, and the number of pounds of fiber gathered, and the number of bushels of seed obtained; the number of acres planted in sorgho, and the number of gallons of syrup and pounds of sugar manufactured; the number of pounds of maple sugar and the number of gallons of maple syrup manufactured; the number of pounds, each, of butter and cheese manufactured; the number of acres planted in potatoes, and the number of bushels produced; the number of acres planted in sweet potatoes, and the number of bush-

els produced; the number of acres in vineyard, the number of acres planted within the year, and the number of pounds of grapes gathered, and the number of gallons of wine produced; the number of pounds of wool shorn; the number of acres in orchard, and the number of bushels of apples, peaches, cherries, plums, and pears produced; the number of acres used for pasturage, and the number of acres not cultivated or pastured; the number of hives of bees, and the number of pounds of honey produced; the number of dozens of eggs shipped to places beyond the state. 1522.

Manufactures.—The number of tons of cold blast pig-iron manufactured from native ore smelted with charcoal, and the number of tons of hot blast pig metal manufactured from the same material; the number of tons of pig metal made from native or foreign ore, smelted with stone coal; the number of tons of bar and nail-rod iron manufactured; the number of tons of nails; the number of tons of hoop-iron; the number of tons of sheet-iron; the number of tons of stoves and hollowware; the number of tons of all other castings; the number of tons of spikes and railroad chairs; the number of tons of car wheels; the number of tons of railroad iron; the number of locomotives built; the number of steam engines constructed; the number of plantation sugar-mills made; the number of portable saw-mills made and the number in use; the number each of reaping and mowing machines; the number of threshing machines. 1522.

Water crafts.—The number of steamboats built upon the Ohio river and its navigable tributaries, and the number of barges, flat-boats, and store-boats, and the value of each; the number of steamboats and sail vessels built upon Lake Erie and its tributaries within the borders of this state, and the value of each; the number of canal boats built and used in navigating the canals. 1522.

Mines and miners.—The number of bushels of stone coal mined; the number of persons engaged in mining stone

coal, and the average rate of wages paid; the number of tons of iron ore mined; the number of persons engaged in mining ores, and the average rate of wages paid; the number of bushels of salt manufactured; the number of gallons of petroleum produced; the number of barrels of lime made; the number of barrels of water cement; the number of gallons of stoneware made. 1522.

Wages.—The number of adult male persons engaged in each of the mechanic arts, and the average monthly or daily wages of each; the number of common laborers and the average daily wages of each; the number of common farm laborers and the average monthly wages of each; the average monthly wages paid to clerks and salesmen or saleswomen; the average monthly wages paid to bookkeepers. 1522.

Investments.—The amount of United States bonds owned; the amount of legal tender notes or moneys exempt from taxation; and the amount of state bonds or certificates. 1522

Social.—The number of marriages between persons related to each other by blood, and the degree of such relationship; the number of persons born with imperfect senses or idiotic, and how many of such persons are the offspring of parents related to each other by blood; the number of houses of prostitution or assignation, and the number of prostitutes. 1522.

Enumeration of deaf and dumb, blind, insane, and idiotic persons.—Beginning with the year 1882, and every fourth year thereafter, it is the duty of the assessor, at the time of taking the tax list, to take an enumeration of all deaf and dumb, blind, insane, and idiotic persons in the township, on the day preceding the second Monday of April, including all such persons in any jail or infirmary, with their names in full, their age, and duration of muteness, blindness, insanity, or idiocy. A list of such persons is required to be made out, designating those of each class, with the name and postoffice address of the parents or guardians

of each person, and returned to the county auditor on or before the third Monday of May in the same year. 1526.

Enumeration of adult males.—Beginning with the year 1883, and every fourth year thereafter, the assessor, at the time of taking up his tax list, is required to take an enumeration of all the male inhabitants about the age of twenty-one years residing in his township or precinct on the day before the second Monday of April, designating such as are of African descent by the word "colored," and to make out and deliver an alphabetical list of the same to the clerk of the court of common pleas at the time of returning the tax lists to the auditor. And for a failure to perform this duty the assessor is liable to a penalty of not more than fifty nor less than five dollars. 1527.

Return of statistics.—The assessor is required to make return of all his lists of statistics at the time that he returns his list of personal property to the auditor, and for a failure to do so is liable to a penalty of not less than twenty nor more than one hundred dollars. Any person refusing to furnish the required statistics is liable to a penalty of not more than one hundred nor less than fifty dollars. 1523, 1524, 1525.

Saloons and all places where liquors are sold are to be listed by assessors, and a return thereof made, showing the names of the person, persons, or company engaged in the business, a brief description of the place and by whom owned—to be sworn to by the owner before the assessor. 85 Laws, 117.

Auditor to furnish blanks.—The county auditor is required to furnish the assessors with all blanks needed by them in their official duties, to be paid for out of the county treasury. For that reason no blank forms are inserted in this work for the use of assessors, other than the forms of official oath and bond. 1528.

Assessors may administer oaths.—Assessors are authorized and required to administer such oaths as may be necessary in the discharge of their official duties. 1521.

Pay of assessors.—Each assessor is entitled to two dollars per day for the time during which he is necessarily engaged in the performance of his duties. An account in detail must be made out by him, showing the date of each day in which he has thus been engaged, which he must verify by oath before the auditor; and if the auditor is satisfied that such account is correct, he is required to draw a warrant on the county treasurer for the amount of the same, but in no case can such warrant be drawn until the assessor has filed with the auditor his list of assessments, accurately made out, and the statements returned to him, and the books on which the original assessments were made, nor until the assessor has filed with the auditor the statistics and enumeration required of him by law, and the auditor is satisfied that the same are as full and accurate as could be made. 1535.

CHAPTER III.

OF BASTARDY.

Mother may commence action.—Any unmarried woman, who has been delivered of, or is pregnant with, a bastard child, may make complaint thereof, in writing, under oath, before any justice of the peace, charging any person with being the father of the child, and the justice must thereupon issue his warrant, directed to any sheriff or constable of the state, commanding him to pursue and arrest the accused person in any county of this state, and bring him forthwith before the justice to answer such complaint. 5614.

Proceedings on return of warrant.—On the return of the warrant, the justice, in the presence of the accused person, is required to examine the complainant under oath, and the accused must be allowed to ask complainant any question he may think necessary for his justification, all of which questions and answers must be reduced to writing by the justice and subscribed by complainant. 5615.

Continuance.—If either party desire it, upon good cause shown, the justice may continue the cause for a period not to exceed ten days, upon the defendant's entering into a recognizance to the State of Ohio to appear at any time fixed by the justice for the hearing of the complaint, with sufficient security, in a sum not less than three hundred nor more than six hundred dollars, to answer the complaint and abide the order of justice. 5616.

Settlement before justice.—If, upon such examination, or at any time before judgment in the court of common pleas, the accused pay, or secure to be paid to the complainant, such sum or sums of money, or property, as she may agree to receive in full satisfaction, and further give bond to the

State of Ohio, with sufficient surety to be approved by the justice or judge, conditioned to save any county, township, or municipal corporation, within the state, free from all charges toward the maintenance of the child, then the justice, court, or judge should discharge the accused on his paying the costs of prosecution. Such agreement must be made or acknowledged by both parties in the presence of the justice or judge, whose duty it is to enter a memorandum of the same upon his docket,[1] or cause the same to be made upon the journal. 5617.

Trustees may bring suit.—When the mother of a bastard neglects to bring suit for its maintenance, or having commenced suit fails to prosecute it to final judgment, the trustees of any township interested may bring a suit, in behalf of the township, against him who is accused of begetting the child, or may take up and prosecute a suit begun by the mother, unless sufficient security is offered to save the township from expenses connected with the maintenance of such child. 5637.

Trustees may sue upon bond. The trustees of a township

[1] Under the bastardy act of February 2, 1824, no compromise can be made which will prevent the complainant from prosecuting, except in the time and manner provided in the act, and a payment of $100 to the mother, not in presence of the justice, in consideration of a release, under seal, is no defense to the prosecution by her. State *v.* Mormon, 2 W. L. M. 308.

In an action on a promissory note given by a party in custody before a justice of the peace, on a charge of being the father of a bastard child, to the mother of such child, for a compromise of such prosecution, and for the support of the child, the facts that the agreement of compromise was not acknowledged before the justice, that no memorandum of the same was entered on his docket, and that no bond was given conditioned that the child should not become a township charge, constitute no defense to the action. Nor does an answer in such action, averring that the child "lived but a few days after birth," and that no expenses were incurred in the support of such child, state facts sufficient to constitute a defense to the action. Maxwell *v.* Campbell, 8 Ohio St. 265.

in which a bastard child becomes a charge, may sue and recover upon any bond given to the State of Ohio in any proceedings against the reputed father of the bastard child, and all the provisions of the statutes contained in chapter 3, division 7, title I of the revised statutes are applicable to all cases in which the trustees are authorized to commence or prosecute a complaint against the reputed father of an illegitimate child. 5638.

Accused may be bound over.—When a settlement is not effected before the justice, as above set forth, it is the duty of the justice to bind the accused to appear at the next term of the court of common pleas, in a bond to the State of Ohio, with sufficient security, in a sum not less than three hundred and not more than six hundred dollars to answer the accusation and abide the order of the court thereon; and on neglect or refusal to give such bond, the justice must commit the accused to the county jail, there to be held to answer the complaint. 5618.

Discharged by recognizance.—The accused may be discharged from custody upon giving such a bond as last above set forth, in a sum of not less than one hundred nor more than six hundred dollars, approved by a judge of the court of common pleas, or probate court, and filed in the office of the clerk of the court of common pleas. 5619.

Transcript must be filed by justice.—The justice before whom the examination was had, must, within thirty days thereafter, file with the clerk of the court of common pleas a certified transcript of the proceedings, together with the recognizance, and all other papers in the case. 5620.

Continuance of the cause.—The cause may be continued by the court, for sufficient reason; and the recognizance will continue in force until final judgment, unless the sureties surrender the accused, and ask to be released, or the court deem the recognizance insufficient. In either of which cases it may order a new bond to be taken, cancel the first, and commit the accused until a new recognizance be given. 5621, 5622.

Pay of assessors.—Each assessor is entitled to two dollars per day for the time during which he is necessarily engaged in the performance of his duties. An account in detail must be made out by him, showing the date of each day in which he has thus been engaged, which he must verify by oath before the auditor; and if the auditor is satisfied that such account is correct, he is required to draw a warrant on the county treasurer for the amount of the same, but in no case can such warrant be drawn until the assessor has filed with the auditor his list of assessments, accurately made out, and the statements returned to him, and the books on which the original assessments were made, nor until the assessor has filed with the auditor the statistics and enumeration required of him by law, and the auditor is satisfied that the same are as full and accurate as could be made. 1535.

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Mother may commence action.—Any unmarried woman, who has been delivered of, or is pregnant with, a bastard child, may make complaint thereof, in writing, under oath, before any justice of the peace, charging any person with being the father of the child, and the justice must thereupon issue his warrant, directed to any sheriff or constable of the state, commanding him to pursue and arrest the accused person in any county of this state, and bring him forthwith before the justice to answer such complaint. 5614.

Proceedings on return of warrant.—On the return of the warrant, the justice, in the presence of the accused person, is required to examine the complainant under oath, and the accused must be allowed to ask complainant any question he may think necessary for his justification, all of which questions and answers must be reduced to writing by the justice and subscribed by complainant. 5615.

Continuance.—If either party desire it, upon good cause shown, the justice may continue the cause for a period not to exceed ten days, upon the defendant's entering into a recognizance to the State of Ohio to appear at any time fixed by the justice for the hearing of the complaint, with sufficient security, in a sum not less than three hundred nor more than six hundred dollars, to answer the complaint and abide the order of justice. 5616.

Settlement before justice.—If, upon such examination, or at any time before judgment in the court of common pleas, the accused pay, or secure to be paid to the complainant, such sum or sums of money, or property, as she may agree to receive in full satisfaction, and further give bond to the

State of Ohio, with sufficient surety to be approved by the justice or judge, conditioned to save any county, township, or municipal corporation, within the state, free from all charges toward the maintenance of the child, then the justice, court, or judge should discharge the accused on his paying the costs of prosecution. Such agreement must be made or acknowledged by both parties in the presence of the justice or judge, whose duty it is to enter a memorandum of the same upon his docket,[1] or cause the same to be made upon the journal. 5617.

Trustees may bring suit.—When the mother of a bastard neglects to bring suit for its maintenance, or having commenced suit fails to prosecute it to final judgment, the trustees of any township interested may bring a suit, in behalf of the township, against him who is accused of begetting the child, or may take up and prosecute a suit begun by the mother, unless sufficient security is offered to save the township from expenses connected with the maintenance of such child. 5637.

Trustees may sue upon bond. The trustees of a township

[1] Under the bastardy act of February 2, 1824, no compromise can be made which will prevent the complainant from prosecuting, except in the time and manner provided in the act, and a payment of $100 to the mother, not in presence of the justice, in consideration of a release, under seal, is no defense to the prosecution by her. State *v.* Mormon, 2 W. L. M. 308.

In an action on a promissory note given by a party in custody before a justice of the peace, on a charge of being the father of a bastard child, to the mother of such child, for a compromise of such prosecution, and for the support of the child, the facts that the agreement of compromise was not acknowledged before the justice, that no memorandum of the same was entered on his docket, and that no bond was given conditioned that the child should not become a township charge, constitute no defense to the action. Nor does an answer in such action, averring that the child "lived but a few days after birth," and that no expenses were incurred in the support of such child, state facts sufficient to constitute a defense to the action. Maxwell *v.* Campbell, 8 Ohio St. 265.

in which a bastard child becomes a charge, may sue and recover upon any bond given to the State of Ohio in any proceedings against the reputed father of the bastard child, and all the provisions of the statutes contained in chapter 3, division 7, title I of the revised statutes are applicable to all cases in which the trustees are authorized to commence or prosecute a complaint against the reputed father of an illegitimate child. 5638.

Accused may be bound over.—When a settlement is not effected before the justice, as above set forth, it is the duty of the justice to bind the accused to appear at the next term of the court of common pleas, in a bond to the State of Ohio, with sufficient security, in a sum not less than three hundred and not more than six hundred dollars to answer the accusation and abide the order of the court thereon; and on neglect or refusal to give such bond, the justice must commit the accused to the county jail, there to be held to answer the complaint. 5618.

Discharged by recognizance.—The accused may be discharged from custody upon giving such a bond as last above set forth, in a sum of not less than one hundred nor more than six hundred dollars, approved by a judge of the court of common pleas, or probate court, and filed in the office of the clerk of the court of common pleas. 5619.

Transcript must be filed by justice.—The justice before whom the examination was had, must, within thirty days thereafter, file with the clerk of the court of common pleas a certified transcript of the proceedings, together with the recognizance, and all other papers in the case. 5620.

Continuance of the cause.—The cause may be continued by the court, for sufficient reason; and the recognizance will continue in force until final judgment, unless the sureties surrender the accused, and ask to be released, or the court deem the recognizance insufficient. In either of which cases it may order a new bond to be taken, cancel the first, and commit the accused until a new recognizance be given. 5621, 5622.

Forfeiture of recognizance.—In case the accused fails to appear at the term of the court to which he is recognized, his recognizance will be forfeited; and if a verdict and judgment be rendered against him, the amount of the forfeited bond may be applied in payment of such judgment. 5623.

Trial by jury.—When the accused fails to appear, or pleads not guilty, in the court of common pleas, he must be tried by a jury; and at the trial the examination before the justice may be given in evidence, and the mother is a competent witness. In every case, where he so desires, the defendant must be permitted to appear and defend, either in person or by counsel.[1] 5624, 5625.

Proceedings upon finding of guilty.—If the jury find the defendant guilty, or if he confesses in court that he is guilty, he is to be adjudged the father of such child, and will stand charged with the maintenance thereof, in such sum or sums as the court may direct, with the costs of prosecution; and it is the duty of the court to require him to give security to perform such order. In case the defendant fails to give security as required, and pay the costs, the court must commit him to jail, there to remain until he complies with the order of the court. But, in case of such commitment, the defendant is entitled, after he has been confined in prison for the period of three months, to the benefit of the statutes for the relief of insolvent debtors. But, before being entitled to such benefit, the putative father is required to give at least three days' notice to the complainant or her attorney of his intention to apply for the same.[2] 5626, 5627.

[1] If the mother of an illegitimate child is living, it is erroneous to try the cause in the court of common pleas without her presence and testimony. Baxter *v.* Columbia Tp., 16 Ohio, 57.

[2] An order of maintenance under the bastardy act is a judgment of a court of competent jurisdiction, and can not be collaterally impeached. Such order may be enforced by execution, as in other cases, the security given under the act being resorted

Death of mother not to abate suit.—The death of the mother will not abate the suit, if the child is living; but a suggestion of the fact should be entered upon record, and the name of the child substituted for that of the mother, and a guardian *ad litem* appointed, who will not be liable for costs; and, in such case, the testimony of the mother, taken before the justice, may be read in evidence. 5628.

Death of child.—The death of the child is not cause of abatement, or bar to the suit; but the court trying the case must take such death into consideration in fixing the amount to be paid. If the child die after judgment rendered, and before the expiration of the time limited for the payments, the court may, on motion and notice, reduce the amount of the judgment in such sum as may be proper.[1] 5629, 5630.

Proceedings when defendant can not be found.—After a warrant has been issued for the defendant, and the return shows that he could not be arrested by the officer, the justice must, upon demand, make out and deliver to the complanant, the trustees of the township, or their attorney, a transcript of the proceedings, including copies of the complaint and warrant, with the return thereon. 5631.

An order of attachment must be made and issued by the clerk of the court of common pleas, when the trustees, or complainant, have filed the said transcript in his office, together with an affidavit showing:

to only in case of the inability of the defendant. Lessee of Darby *v.* Carson, 9 Ohio, 149.

The putative father of a bastard child can not be discharged from an order for the maintenance of the child by proceedings in bankruptcy. In such case the mother has preference over the assignee in bankruptcy, and the assets of the insolvent will be first applied to the satisfaction of the order of the court in her favor. Hawes *v.* Cooksey, 13 Ohio, 242.

[1] A prosecution under the bastardy act does not abate by the death of the child pending the prosecution, but the case may proceed to judgment. Hinton *v.* Dickinson, 19 Ohio St. 583.

First. That the complainant is the mother of a bastard child, or that she is pregnant with child, which, if born alive, will be a bastard; and,

Second. That the accused person is the father of said child; and,

Third. The existence of one or more of the following grounds:

1. That the accused is a non-resident of this state.

2. Has absconded with the intent to defraud complainant; or,

3. Has left the county of his residence to avoid the service of a warrant; or,

4. So conceals himself that a warrant can not be served upon him. 5632.

Duty of sheriff.—The order of attachment is required to be directed and delivered to the sheriff, and the sheriff must thereupon proceed to attach the property of defendant, as in an ordinary civil action, to an amount not exceeding one thousand dollars in appraised value.

No bond is necessary to procure the order of attachment. 5633.

Attachment proceedings same as in civil action.—Such attachments are subject to the provisions of the statute relating to attachments in civil actions, and are to be governed thereby in all respects. 5633.

Publication of notice.—After the order of attachment is returned, notice of the pendency of the proceedings, stating the object thereof, the subject of said complaint, and that an order of attachment has been issued and served therein, may be given by publication in some newspaper of general circulation in the county, for six consecutive weeks; and in such case, copies of the complaint and order of attachment, with the return thereon, must be forthwith deposited in the post-office, directed to the accused at his place of residence, unless it be made to appear to the court, by affidavit or otherwise, that such residence is unknown

to the complainant, and could not, with reasonable diligence, be ascertained by her. 5634.

Personal service.—If the place of residence is known, personal service of copies of the complaint and order of attachment, with the return thereon, should be made. 5635.

Hearing.—The case may be heard and determined at any time, after the expiration of six weeks from the time of personal service, or after the first publication. 5635.

Property applied to payment of judgment.—After judgment against the defendant, the court must order that, unless the defendant pay the amount of the judgment, with the costs, by a day fixed by the court, the property in the hands of the officer—perishable property first, personal property next, and lands and tenements last—may be sold as upon execution, in the order named, to satisfy the order or judgment. The money arising from the sale, and received from the garnishee, is to be applied to the satisfaction of the judgment or claim. If there be not enough, execution may be issued for the remainder. Any surplus must be returned to the defendant.

CHAPTER IV.

BONDS.

Official bond good, if penal amount filled before acceptance.—It is provided that all official bonds shall bind and render liable thereon, all the obligors therein, both principals and sureties, whether at the time of signing and sealing the same by such obligors, or any of them, the amounts of such bonds be filled in or left blank, if such amounts be filled in before, or at the time of the approval or acceptance of such bonds; and such filling in may be done in the absence of any or all of the obligors, and without any express authority from them or any of them. 6.

How surety may be released.—Any surety on the official bond of any township officer, including justices of the peace and constables, may at any time notify the trustees, by giving at least five days' notice in writing, that he is unwilling to continue as security for such officer, and will, at the time therein named, make application to the trustees to be released from further liability upon the bond of such officer. At least three days' notice in writing must also be given to the officer of the time and place at which such application will be made. 5843.

No. 4. Form of Notice to Trustees.

To the Trustees of Township:

You are hereby notified that I am unwilling to continue as surety upon the official bond of , a of township, and that I shall, at , in , on the day of , 18 , make application to you, the

said trustees, to be released from all further liability upon the bond of the said .

Given at , this day of , 18 .

(Signed,) —— ——.

No. 5. Form of Notice to the Officer.

To , of Township:

You are hereby notified that, on the day of , 18 , at , in , I shall apply to the trustees of township to be released from all further liability upon your bond as of township.

This day of , 18 .

(Signed,) —— ——.

Service of notices.—Copies of the notice to the trustees should be served upon each of them personally at least five days before the time named, and a copy of the notice to the officer should be likewise served upon him at least three days before the time for the hearing.

Hearing of application.—It is the duty of the trustees, upon the receipt of such notice, to hear the application; and if, in their opinion, there is good reason therefor, they may require such officer to give a new bond, conditioned according to law and to the satisfaction of the trustees, within such time as they may direct. 5844.

Officer to give new bond.—It is provided that if the officer fail to give the new bond, as required, the office is to be deemed vacant, and shall be immediately filled as other vacancies in said office. 5844.

When sureties' release takes effect.—The original surety or sureties can not be released until the filing of a new bond, or until a vacancy occurs for want of such bond, and they are liable upon their bond for the acts of the officer up to that time, but no longer, if released. They are required also to pay the costs of the application. 5844.

SECTION 2. BONDS TO SECURE PAYMENT OF TOWNSHIP DEBTS.

Bonds may be reissued, and how.—The trustees of any township, which may have issued or may hereafter issue, pursuant to law, any bonds for improvement purposes, or to redeem any bonds previously issued, may issue other bonds, not exceeding in amount the principal of the preceding issue; provided, that no new debt be created and no bonds reissued, the payment whereof is by law provided for by specific levies and assessments, or where bonds have been issued to contractors or others, and received by them in payment or part payment for labor done or materials furnished for any local or special improvement.[1]

Form of bonds, number, etc.—Such bonds may be made payable to bearer, and must be numbered and registered.[1]

Each bond must be executed for a sum not less than one hundred and not more than one thousand dollars, and to become due at any period therein named, not to exceed twenty years from its date. The rate of interest thereon must not exceed eight per cent. per annum, payable in semi-annual installments; and each bond, with its coupons, may be made payable at any place therein designated.

No bond can be sold for less than its par value.[2]

Proceeds, how applied.—The proceeds of such bonds must be applied to the redemption of an equal amount of the principal of the former issue, and to no other purpose whatever.[2]

The register of bonds is usually in a book kept for that purpose, in form as follows:

[1] 68 Ohio L. 45; 72 Id. 40.

[2] 68 Id. 97.

No. 6. Bond Register.

Date of Bond.			No.	To whom issued	When due			When payable.	Amount.		When interest due.	Rate of Int.	Redeemed.			Remarks.
Mo.	Day.	Yr			Mo.	Day.	Yr		Dols.	Cts.			Mo.	Day.	Yr.	

Levy to pay bonds.—The trustees are authorized and required to assess and levy, in the usual manner, an annual tax to pay the interest upon such bonds, and also such further tax, in every year, as they shall find, on computation, to be necessary to redeem the principal of said bonds at maturity. This power of taxation is special and in addition to the powers of taxation otherwise conferred upon the trustees by law.[1]

Sinking fund formed.—The trustees must immediately proceed to purchase and redeem the bonds with the money raised by such taxes and levy, or, on failure to obtain the same, must invest in the bonds and stocks of the United States, or of the State of Ohio, any funds in the treasury, or which may hereafter come into the same, as the proceeds of a tax levied for the purpose of a sinking fund, to pay the principal of such bonded indebtedness when the same shall fall due, until the funds are needed for the purpose for which they were levied and collected, and the interest accruing from such investment must be added to and made a part of the sinking fund.[1]

No part of the sinking fund can be lawfully appropriated to any other use or purpose.[1]

Power to issue bonds.—The trustees of a township have no authority to issue bonds or incur indebtedness, except in pursuance of some statute conferring it upon them.

The power to create local indebtedness is one of great importance, and has been jealously guarded by the constitution and laws of the state. Excepting for a very small number of objects, which will be found set forth elsewhere, no such power exists in the township; and when it is desired to raise a larger sum than can be obtained by taxation for any local improvement or other purpose, recourse must usually be had to the general assembly for the proper authority.

Bonds in aid of railroads.—The trustees of any township

[1] 68 Ohio L. 46.

which has heretofore subscribed to the capital stock of any railroad, turnpike, or plank-road company, and has issued, or may hereafter issue, any bonds in payment of such subscription, are authorized to sell the stock so received, and apply the proceeds thereof to the payment and cancellation of the bonds; or, in case the bonds have been paid, they are authorized to sell the stock, and place the proceeds to the credit of the general fund of the township. In either case, the sale may be upon such terms as the trustees deem most beneficial to the township.[1]

In case the bonds can not be obtained for redemption at par, the proceeds of the stock must be invested in United States bonds, or the bonds of this state, or upon bond and mortgage upon unincumbered real estate held in fee simple in the county—the loan not to exceed one-half the appraised value of the mortgaged property—and held exclusively as a fund for the payment of interest upon, and redemption of the bonds, which may be redeemed either at maturity or before, if they can be obtained at par.[1]

All cases where townships lawfully became stockholders in such corporations must have occurred prior to the adoption of the present constitution of the state, in 1851, for section 6 of article 8 forbids the general assembly to authorize any township "to become a stockholder in any joint-stock company, corporation, or association whatever, or to raise money for, or loan its credit to, or in aid of, any such company, corporation, or association."

Bonds issued by townships subsequently divided.—When a township has been divided into two or more parts, subsequent to the original issue of bonds, in aid or for purposes of public improvement, it is competent for the authorities of the parts so constituted, jointly, to issue new bonds for the amount becoming due. 1489.

Annual meeting to levy tax to pay bonds.—The trustees of the townships so constituted out of the division of a town-

[1] S. & S. 113.

premises can not be obtained by contract, upon reasonable terms. 1464.

Certain lands can not be taken.—Land can not be taken for cemetery purposes upon which there is any house, barn, stable, or other building, or upon which there may be any orchard or nursery, or any mineral or medicinal spring, or any well yielding oil or salt water, or which is within two hundred yards of any dwelling-house.[1] 1464.

Road to cemetery.—The trustees, when petitioned by twenty-five interested persons, are required to provide a public road to any township cemetery over which they have control, in the same manner as herein provided for establishing cemeteries and obtaining lands therefor.[2]

Vote must be taken before levy made.—Before any purchase or appropriation is made, or conveyance accepted, as provided above, for cemetery purposes, it is necessary to submit the question to the voters of the township at the regular April election.[3] 1465.

Notice of election.—On the order of the trustees, or on the written application of any six electors of the township, specifying as near as may be the proposed location of the cemetery or cemeteries, and the estimated cost thereof, including inclosing and improving the same, it is the duty of the clerk to give notice at least twenty days before the election that the vote will be taken, by posting up written notices in at least three public places of the township. 1465.

No. 7. Form of Notice.

To the Electors of Township:

Notice is hereby given that, at the election to be held

[1] 77 Ohio Laws, 41; 88 Laws, 584.

[2] 1464, as amended, 88 Laws, 584.

[3] By a reasonable construction of the two sections of the statute, an election, and vote in favor of the tax, are preliminary requisites indispensable to authorize the trustees to proceed, under the statute, to purchase a cemetery, and to direct township orders to be issued in payment thereof. Trustees of Paris Tp. *v.* Cherry, 8 Ohio St. 564.

The statutory provision requiring a preliminary vote to authorize a levy and assessment for the purchase of cemetery grounds, is not in contravention of section 26 of article 2 of the constitution of this state. Ibid.

on the day of April, A. D. 18 , the question of a tax for cemetery will be submitted to the voters of said township

Dated at , this day of , A. D. 18 .

——— ———,

Clerk of Township

Taking the vote.—It is required that the electors who favor the proposition shall put on their ballots for township officers the word, "cemetery," and if a majority of all the votes given at such election be in favor of the proposition, the trustees may procure the lands and levy the taxes as aforesaid. 1465.

Platting the cemetery.—The trustees may have such cemetery laid out in lots, avenues, and paths, number the lots, and have a suitable plat thereof made, which is to be carefully preserved by the clerk. 1466.

Division and control of cemetery.—The trustees may make and enforce all needful regulations for the division of such cemeteries into lots, and the allotment of such lots to families or individuals, and for the care, supervision, and impovement thereof; and it is required that suitable provision shall be made therein for the burial of persons whose burial is at the expense of the township. 1466.

Sale of lots.—For the purpose of grading, improving, and embellishing the cemetery, the trustees, after proper notice has been given, may proceed to sell such number of lots as the public wants demand, at such time, in such manner, and on such terms as in their judgment is deemed most advantageous. If it is determined to sell at private sale, the notice should state a time at and after which lots may be purchased, and the place where the trustees will attend for that purpose. If the sale is to be at auction, the notice should specify the time and place where it is to be held, and in either case copies of the notice should be posted in various places in the township, and a copy of it, with the date and manner of posting should be entered upon the records of the trustees. 1467.

premises can not be obtained by contract, upon reasonable terms. 1464.

Certain lands can not be taken.—Land can not be taken for cemetery purposes upon which there is any house, barn, stable, or other building, or upon which there may be any orchard or nursery, or any mineral or medicinal spring, or any well yielding oil or salt water, or which is within two hundred yards of any dwelling-house.[1] 1464.

Road to cemetery.—The trustees, when petitioned by twenty-five interested persons, are required to provide a public road to any township cemetery over which they have control, in the same manner as herein provided for establishing cemeteries and obtaining lands therefor.[2]

Vote must be taken before levy made.—Before any purchase or appropriation is made, or conveyance accepted, as provided above, for cemetery purposes, it is necessary to submit the question to the voters of the township at the regular April election.[3] 1465.

Notice of election.—On the order of the trustees, or on the written application of any six electors of the township, specifying as near as may be the proposed location of the cemetery or cemeteries, and the estimated cost thereof, including inclosing and improving the same, it is the duty of the clerk to give notice at least twenty days before the election that the vote will be taken, by posting up written notices in at least three public places of the township. 1465.

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Notice is hereby given that, at the election to be held

[1] 77 Ohio Laws, 41; 88 Laws, 584.

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on the day of April, A. D. 18 , the question of a tax for cemetery will be submitted to the voters of said township

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Sale of lots.—For the purpose of grading, improving, and embellishing the cemetery, the trustees, after proper notice has been given, may proceed to sell such number of lots as the public wants demand, at such time, in such manner, and on such terms as in their judgment is deemed most advantageous. If it is determined to sell at private sale, the notice should state a time at and after which lots may be purchased, and the place where the trustees will attend for that purpose. If the sale is to be at auction, the notice should specify the time and place where it is to be held, and in either case copies of the notice should be posted in various places in the township, and a copy of it, with the date and manner of posting should be entered upon the records of the trustees. 1467.

Deed for cemetery lot.—Upon complying with the terms of sale, each purchaser is entitled to receive a deed or deeds for the lot or lots purchased by him, and it is the duty of the trustees to execute such deeds. 1467.

No. 8. Form of Deed for Cemetery Lot.

Know all men by these presents, that the undersigned, trustees of township, county, in the State of Ohio, for and in consideration of the sum of . dollars, to them paid by of said township, have sold, and by these presents do grant, bargain, sell, and convey to the said and his heirs, the following lot of ground, to wit, lot No. , in square , as mentioned and described on the plat of the cemetery, on file in the office of the clerk of this township, to have and to hold the same to the use of the said and his heirs, for the purposes of burial only, subject to the cemetery laws of this state, and to the rules and regulations prescribed by the trustees of said township with reference to the said cemetery.

In testimony whereof, , , and , the trustees of said township of , have hereunto set their hands, on this day of , 18 .

____ _____

____ _____

____ _____

Executed and acknowledged
in presence of us.

____ _____

____ _____

State of Ohio, County of , ss:

Be it remembered that, on this day of , 18 , personally appeared before me, the undersigned , the said , , and , and acknowledged the signing of the foregoing deed to be their voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and official seal the day and year aforesaid.

——— ——— [SEAL.]

———

The deed should be acknowledged before a justice of the peace, or other officer authorized to take the acknowledgment of deeds.

Record of deed.—It is required that the deed shall be recorded by the clerk, in a book by him provided for that purpose, the expense of recording to be paid by the person receiving the deed. 1467.

Donation of lots.—It is required that the trustees shall, upon the application of the head of any family living in the township, make and deliver to such head of a family a deed for a suitable lot for the burial of his or her family, without charge, if, in the opinion of the trustees, by reason of the circumstances of such family, payment therefor would be oppressive. 1467.

Improvement of grounds.—The proceeds arising from such sales of lots may be expended in improving and embellishing the grounds, but the trustees may enter into no contract for such purpose exceeding the means within their control. 1468.

Exempt from execution.—Any such cemetery lot held by an individual is exempt from execution. 1469.

Sexton liable for neglect.—If the sexton, or other person in charge of the cemetery, permit a corpse to remain in any vault, or other receptacle, until the same becomes offensive, he will be liable, on the complaint of any person, before a justice of the peace of the township, to a fine of not over twenty dollars, and an additional penalty of five dollars for every day after the fine, that the nuisance may be continued. 1470.

Disposition of offensive corpse.—If the dead in the vault, or other receptacle, become offensive, it is the duty of the trustees, upon the complaint of any householder in the

township, to issue an order forthwith to the sexton or person in charge, to cause the body or bodies to be immediately interred. In case the interment is neglected for three days after the complaint, any justice of the peace of the township may issue his written order to any householder of the township to inter the dead at the expense of the said trustees, and allow a reasonable charge for the service 1471.

Addition to cemetery grounds.—If the trustees deem it desirable to add to the area of any cemetery owned wholly or in part by the township, and if suitable lands can not be obtained by contract on reasonable terms, they may appropriate lands therefor, not exceeding five acres, by proceedings in accordance with the provisions and subject to the restrictions of section 1464 of the Revised Statutes; and for that purpose they may levy a tax not exceeding one-half of one mill on the taxable property of the township, for a period of not more than five years, to be collected as other taxes, and appropriated to the purchase or appropriation of such additional cemetery grounds, which, when acquired, are to become part of the cemetery; to be governed in all respects as provided by law. 1472.

Control of certain burial-grounds vested in trustees.—The title, right of possession, and control of all public graveyards and burial-grounds, located without the corporate limits of any city, town, or village, which have been set apart and dedicated as public graveyards or burial-grounds, and grounds which have been used as such by the public, but not expressly dedicated, except such as may be owned or under the care of any religious or benevolent society, or any incorporated company or association, or under the control of the authorities of some city or village, are vested in the trustees of the township where they are severally located. 1473.

Powers of trustees.—It is the duty of the trustees to provide for the protection and preservation of such grounds, as last above named, to institute suits when necessary to re-

cover possession thereof, to remove trespassers therefrom, and to recover damages for injuries to the same, or to any fence or hedge, or any tomb or monument thereon. The trustees are also empowered to inclose the grounds with a fence or hedge, to keep them inclosed and in good repair, and to levy a tax for that purpose, not exceeding one-half of one mill in any one year, upon all the taxable property of the township. 1473.

When interments shall be prohibited.—It is the duty of the trustees to prohibit interments in any such cemetery when new grounds have been procured for township cemetery or burial-ground, and when such old cemetery is in or near a village or town plat, and the public health is liable to be injured by further interments. 1473.

Penalty for neglect of duty by trustees.—Any trustee neglecting or refusing to perform the duties required of him, as set forth in the three preceding paragraphs, thereby becomes liable to a fine of not less than five nor more than twenty dollars, to be recovered by action in the name of the trustees for each offense; and when collected, the fine is required to be paid over to the treasurer of the township, within ten days thereafter, to be applied by the trustees to repairing the cemetery or burying-grounds. 1473.

Trustees may appoint directors of cemetery.—The trustees may appoint three directors to take charge of any cemetery in the township, the control of which is vested in the trustees, and the order appointing the directors must designate by name the cemetery or cemeteries over which they are to have supervision. The first directors appointed are to hold their offices for one, two, and three years respectively from the second Monday of May, after their appointment, and until their successors are appointed and qualified; and, thereafter, one director is to be appointed to serve for three years from the second Monday of May of each year. The directors are to be governed in the discharge of their duties by the same laws that govern township trustees in the control of cemeteries, in so far as the same are applicable. 78 Ohio Laws, 125.

Watchmen.—The trustees, or cemetery directors, when in charge, may appoint as many day and night watchmen as they deem expedient. Such watchmen and all cemetery agents, superintendents, and gardeners must take an oath of office as required of constables (see page 59), and are clothed with police powers, and may arrest on view any one found violating the by-laws, rules, and regulations of the trustees or directors as to such cemeteries, or the laws of the state for the protection of the same, and any such person, if found guilty, may be fined in any sum not more than fifty nor less than five dollars by a justice of the peace of the township.

Soldier's monuments.—In any township in which the citizens have erected, or may hereafter erect, a monument to commemorate the volunteers thereof, who died in the service of the United States or of this state, during the late civil war, either upon public grounds of such township, or upon grounds donated or procured by the citizens for that purpose, and which they have caused or may hereafter cause to be inclosed, the trustees are authorized to take charge of such monument, grounds, and inclosure, and keep the same in repair, at an expense of not more than fifty dollars in any one year, and not more than an average of twenty-five dollars in each year, to be paid out of the township funds. 1475

Fences around abandoned burial grounds.—The county commissioners are required to inclose with a substantial fence of stone, iron, or posts and boards, all abandoned public burial grounds in the county, from which the remains have not been removed, and it is the duty of the township trustees to keep any fence so constructed in good repair.[1]

SECTION 2. JOINT CEMETERIES.

Burial-grounds on township line.—When any public burial-ground is located on or near a township line, and is used by the people of two or more townships for burial purposes, it is required that the trustees of such townships shall jointly take possession of the same, and take care of and keep the same in repair, as required as to public burial-grounds in and belonging to the respective townships, and the trustees of each township are required to levy needful taxes in that behalf, not exceeding in any year one-fourth of one per cent. 1474.

Two or more townships may join in establishing cemetery.—Two or more townships may join in establishing and maining a cemetery, and for this purpose the trustees have the same powers, are to be governed by the same rules, and proceed in the same manner as provided for municipal corporations and townships uniting for that purpose. 1474.

Townships and municipalities may jointly establish cemetery.—The councils of municipal corporations and trustees of townships, whether one or more of each, when conveniently located for that purpose, may unite in the establishment and management of a cemetery, by the pur-

[1] 87 Laws, 238.

chase or appropriation of land therefor, not exceeding one hundred acres in extent 2532.

Election of trustees in such case.—When two such bodies unite for cemetery purposes, the corporation or township having the larger number of voters at the last preceding annual election for corporation or township officers is required to elect two trustees, and the other corporation or township one trustee; and thereafter each corporation or township will be entitled to two trustees every alternate year. When three such bodies unite for such purposes, each of such corporations or townships will be entitled to one trustee. When four or more such bodies unite for such purposes, the three corporations or townships having the largest number of voters at the last election will be entitled to elect one trustee each, and at the next annual election the corporation or township having the largest number of voters at the last election will not be entitled to a trustee, but the corporation or township standing fourth in the number of voters will be entitled to a trustee, and so on in rotation, so that each corporation and township shall be without a trustee at regular intervals corresponding with the number of bodies that may be so united. All vacancies in the board are to be filled by a joint session of all township trustees and village or city councils interested. 2533.

How appropriations of land shall be made.—When an appropriation of land for such purpose becomes necessary, it is to be made by the municipal corporation, or if there be more than one such corporation, then by the one having the largest number of inhabitants at the last federal census, which corporation, in making the appropriation, is required to act for itself and any other corporation or township uniting with it, and the proceedings are to be the same as where the appropriation is made by the corporation alone. 2534.

Title, how vested.—The title to such cemetery grounds is to be held by the corporation making the appropriation, in trust for the use of the inhabitants of the townships and

corporations interested; and provision is required to be made for the interment in such cemetery of all persons buried at the expense of the corporations or townships. 2535.

Expense of purchase and taxation.--The expense of the purchase or appropriation is required to be borne by the corporations and townships in proportion to the property of each on the duplicate for taxation. Any bonds issued are to be in the same proportion, and the rate of taxation for all such cemetery purposes the same in township and corporation. 2536.

Control of cemetery.—Such joint cemetery is by law placed under the control and management of the said trustees of cemeteries, and their authority over the same, and duties in relation thereto, are the same as where the cemetery is the exclusive property of a single corporation For which, see the Revised Statutes, sections 2521 to 2531 inclusive. 2537.

Corporation may protect by ordinance, etc.—The council of any city or village owning a cemetery in common with a township may pass and enforce all ordinances to carry into effect the provisions of the statute, and such as may be deemed necessary for the preservation and regulation of such cemetery; and, for the punishment of any person violating the ordinances, rules, and regulations relating to such cemetery, the mayor and police officers of the city or village have the same jurisdiction and authority over it as if the cemetery were situated within the corporate limits. 2538.

Equal rights of township and corporation.—No discrimination can be made by the trustees of joint cemeteries, in favor of any township or corporation, but affairs of the cemetery are to be in all respects managed as if owned and governed by the corporation or township alone. 2539.

Joint meeting of trustees and council.—It is provided that the trustees of the township and the council of the corporation, where there is but one of each, shall have a joint meeting at the council chamber, on the day of the first regular meeting of council in the month of May, for the

purpose of determining the rate of tax to be levied for such cemetery purposes; and, upon the passage of a joint resolution by the majority of the members of the council and trustees, fixing the rate of taxation, it is made the duty of the clerk of the corporation to certify such rate to auditor of the county for assessment and collection. 2540.

Joint meetings in other cases.—Where there is more than one corporation or township united with another corporation or township for cemetery purposes, the councils and trustees of townships become a joint body, with the same powers as if there had been one corporation and one township, and the clerk of the corporation having the greatest number of inhabitants is to certify the rate of taxation to the county auditor. 2540.

Joint meetings to make rules, etc.—The trustees of any township or any council interested may at any time call a joint meeting, on reasonable notice, for the purpose of making or changing joint rules and regulations for the government of the cemetery, and making such orders as may be necessary for the application of the moneys arising from the sale of lots, and from taxes or otherwise. 2541.

Vote and record.—At all joint meetings, each member of the council, and each of the trustees, is entitled to one vote in determining all questions, and the proceedings are to be recorded by the corporation clerk, and, in case of more than one corporation, by the clerk of the corporation containing the largest number of inhabitants. 2542.

Adjoining township may be admitted to participate.—Any township adjoining one in which a joint cemetery has been established may, by consent of the trustees of the township, and the council or councils of the corporation or corporations, be admitted to an equal participation with the inhabitants thereof, in the rights and privileges in such cemetery, upon such terms as may be mutually agreed upon; but the title and control of the cemetery will remain vested in the corporation, and any such corporation or township may, by resolution of the council or trustees, and with the consent of all the townships and corporations interested, withdraw from the management and control of such cemetery, and relinquish all interest therein, and thereupon the management and control of the cemetery will vest in the remaining corporations and townships, 80 Laws 6. 2543.

Lands previously held may be made use of.—In establish-

ing a joint cemetery, use may be made of any cemetery or burial-grounds held by the township, village, or city, or of any land which may have been acquired by dedication, gift, or devise, for burial purposes, by either. 2544.

Existing cemetery may be purchased.—For the same purpose, the council or councils and township trustees may purchase of any incorporated cemetery association the lands, lots, and improvements of such association remaining unsold, and take a conveyance thereof, the purchase-money to be applied to the payment of the legal debts of the association, to the embellishment and preservation of the land purchased, and to such other purposes as the trustees of the cemetery may direct. 2545.

Titles of previous lot-owners inviolate.—The rights and titles of lot-owners previous to such sale can not be questioned, and such lot-owners may continue to hold and occupy their lots, under such rules and regulations as may be adopted for the government and regulation of the cemetery, by the authorities making the purchase. 2546.

Record of plat and deeds.—It is the duty of the clerk of the corporation to record in a book to be provided for that purpose a plat of all grounds for cemetery purposes, laid out into avenues, walks, paths, and lots, and he is required to execute to the purchasers of lots such conveyance as may be necessary to carry into effect the contracts of sale, and to record such conveyance, at the expense of the person receiving it, in a book to be kept for that purpose. 2547.

Power to sell portions of cemetery.—The trustees of any such joint cemetery may, with the consent of the council or councils and the trustees of the township or townships, in joint meeting assembled, sell or mortgage any portion of the real estate, such as has not been used for burial purposes, or as may not be, in the opinion of the trustees, needed for the same, for the purpose of paying any indebtedness arising out of the purchase or improvement of such cemetery; and the proceeds of such sale or mortgage can be applied only to the payment of such indebtedness, ex-

cept in case of a surplus, in which event, the surplus may be applied to the improvement of the cemetery grounds, and to no other purpose whatever. 2549.

Existing joint cemeteries to be governed by these provisions.—Cemeteries heretofore jointly established by township trustees and municipal corporations are to be governed by the foregoing provisions, so far as the same are applicable. 2553.

When village property exempt from township cemetery tax.—Property within any village is exempted from tax for the purchase or maintenance of cemeteries under the superintendence of the township trustees, for the use of the township exclusive of the village, when there is a cemetery established and maintained by the village.[1] 2554.

SECTION 3. TAX TO PURCHASE HEARSE OR BURIAL VAULT.

Hearse and vault tax may be submitted.—The trustees of any township are authorized to submit to the electors of the township, at any general election, the question of levying a tax to purchase a hearse and build a vault for the use of the township, to be under the control of the trustees, or some person appointed by them. The question of levying the tax for either or both said purposes may be submitted at the same time, but the submissions must be separate from each other and the amount asked for each separately stated. 1485.

Notice of submission of hearse or vault tax.—Twenty days' notice is required to be given by posting in at least three public places in the township. The notice must state specifically the amount to be raised, and whether for hearse or vault, and if a majority of all the votes cast at the election are in favor of either or both of the propositions the same is to be considered adopted and the tax levied. 1485.

FORM NO. 9. NOTICE OF VOTE ON HEARSE TAX.

Notice is hereby given to the qualified electors of the

[1] 77 Laws, 117.

township of , county of , that the question whether a tax shall be levied upon the property of the township, to purchase a hearse for the use of the same, will be submitted to them, and a vote taken thereon at the general election to be held in said township on Monday, the day of April, 18 .

The amount to be raised to purchase said hearse is $, and taxes to raise said amount will be levied in case an affirmative vote is had. Electors should place upon their ballots the words, "Tax for Hearse—Yes," or, "Tax for Hearse—No."

Given at , this day of , 18 .

—— ——,
—— ——,
—— ——,
Trustees of Township.

Attest: —— ——, *Township Clerk.*

If the propositions be for taxes for both hearse and vault, the above form may be used for each; and in that case the votes for both are to be upon the same ballot, though separate from each other. 1486.

Trustees may issue bonds in anticipation of vault tax.—When a tax for erecting a vault has been voted in accordance with the foregoing provisions, the trustees of the township, in anticipation of such tax, may issue bonds of the township in an aggregate amount, not exceeding the tax voted, of denominations of not less than fifty dollars, bearing interest at a rate not exceeding six per cent., and payable not later than four years from date It is provided that such bonds shall not be sold below par, and the proceeds shall be used solely for the construction of the vault; also that the bonds shall be signed by the trustees, countersigned by the township clerk, and repaid from the tax voted when collected. 1487.

Burial of unclaimed dead.—When the trustees are informed that the dead body of any pauper or unknown person not the inmate of a penal, reformatory, benevolent, or charitable institution, has been found in the township, and such body is not claimed for private interment, or delivered over for dissection, it is their duty to cause the body to be buried at the expense of the township, keeping an accurate account of the moneys so expended, which, with the vouchers therefor, they should certify to the county commissioners in counties having no infirmary, who are required to cause the same to be refunded to the township out of the county treasury on the warrant of the auditor; but in counties having an infirmary, they must certify the expenses to the infirmary directors, who are required to refund the same to the township. 84 Laws, 29, and 87 Laws, 282.

CHAPTER VI.

CLERK OF TOWNSHIP.

Election of.—The township clerk is elected on the first Monday of April, and holds office for the term of two years. But it is provided that clerks and treasurers elected in April, 1888, shall continue in office for the term for which they were elected, and until the following first day of September. The clerk and treasurer can not be elected at the same election, except in case of a vacancy. 1448.[1]

Tie vote, how decided.—In case of a tie vote between two or more candidates for the office, it is the duty of the judges and clerk of election to determine by lot which of the persons shall be declared duly elected. 1448.[1]

Vacancies.—Vacancies in the office are to be filled by the trustees until the next election occurring more than thirty days after the vacancy happens, when a clerk is required to be elected for the unexpired term, and the person appointed by them is required to take the same oath, give the same bond, and perform the same duties, as if elected. 1450,[1] 1451.

Bond.—Before entering upon the duties of his office, which begins on the first day of September, the clerk is required to give bond to the trustees of the township, payable to them, in such sum as they may think proper, conditioned for the faithful performance of his duties as clerk. 1501, 1455, 1453.[2]

Bond to be recorded and preserved.—It is the duty of the clerk to record the bond, and then file it with the township treasurer, who is required to carefully preserve the same. 1501.

Oath.—It is required that the clerk shall also, before entering into office, take an oath or affirmation before a person, other than the clerk, authorized to administer the same, faithfully to discharge the duties of his office; a certificate of which oath he should procure from the officer administering the same, and record in the book kept for the record of official oaths and bonds. 1454, 1455.

[1] As amended, 87 Laws, 118, and see 85 Laws, 196.
[2] As amended, 85 Laws, 192.

No. 10. Form of Bond.

Know all men by these presents, that we , as principal, and , as sureties, are held and firmly bound unto the trustees of township, in the county of , and State of Ohio, in the sum of dollars, to be paid to the said trustees of the township aforesaid, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators, firmly by these presents.

In testimony whereof, we have hereunto set our hands, this day of , A. D. eighteen hundred and .

The condition of the above obligation is such that, whereas, the said has been duly elected and qualified as clerk of township, county, and State of Ohio, for the term of two years from the day of September, A. D. 18 , and until his successor is elected, or appointed, and qualified.

Now, if the said , shall faithfully perform his duties as said clerk, then this obligation will be void; otherwise to be and remain in full force and effect.

——— ———
——— ———
——— ———

The sureties on the above bond approved by us:

——— ———
——— ———
——— ———

Trustees of said Township.

The State of Ohio, County, Township, ss:

Before me, , clerk of said township, personally came , who, being duly sworn accordingly to law, says that he will support the constitution of the United States and the constitution of the State of Ohio; and that he will faithfully discharge his duties as clerk of township, county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

———

Sworn to before me, and signed in my presence, on this
day of , A. D. 18 . ——— ———
Township Clerk.

Duties of clerk.—It is the duty of the clerk to keep accurate record of the proceedings of the trustees at all their meetings, including their acceptance of the bonds of township officers. 1502.

To make out and set up copies of accounts.—Immediately after the annual settlement, it is the duty of the clerk to make out and enter in the record book of the proceedings of the trustees a detailed statement of all liabilities and also of all receipts and expenditures of the township for the preceding year, stating for what the money was received, and how and to whom expended.

At the same time, he is required to make out and enter a similar account of the receipts, expenditures, and liabilities of the township board of education.[1] 1504.

He is required to set up a copy of these accounts, at least ten days before the first Monday of April, with each notice of the township election, and also at the place of holding township elections, on the morning of the first Monday of April, annually. For a failure to make out, enter, or publish such statement, the clerk is liable to a fine of not more than thirty nor less than twenty-five dollars, recoverable before any justice of the peace of the township, and to be paid into the school fund of the township. 1504.[1]

The method of keeping accounts indicated below has been found highly useful, and is much commended for simplicity and convenience. The book wherein they are kept is prepared, as represented, with alternate pages, the one showing the receipts and the other the expenditures. The same method may be used by both clerk and treasurer. One considerable advantage of this system is that the exact state of each fund may be ascertained at any time by a moment's examination.

A copy of the accounts, balanced up to and including the March settlement, drawn out on a large sheet, in accordance with the following form, and set up as above stated, will fulfill all the requirements of the law in that respect. The accounts of the school fund should be treated in the same manner:

[1] 80 Laws, 21; 88 Laws, 484.

Dr. , *Treasurer of* *Township,* *County, in account with said township for township funds.* **Cr.**

Date.	Receipts.	Voucher.	General Fund.	Road Fund.	Poor Fund.	Total.
1873 March 4	Bal. on hand at settlem't with trust	1	$300 00	$200 00		$500 00
Sept. 20	Road tax received	2		400 00		400 00
"	Tax for general purposes	3	800 00			800 00
"	Received from infirmary fund	4			$150 00	150 00
1874. Feb. 20	Received tax for general purposes	5	75 00			75 00
"	Received road tax	6		45 00		45 00
	Total		$1,175 00	$645 00	$150 00	$1,970 00

Date.	Expenditures.	Voucher.	General Fund.	Road Fund.	Poor Fund.	Total.
1873. April 2	J. Smith, material for roads	1		$70 00		$70 00
April 9	P. Jones, repairing Millcreek bridge	2		105 00		105 00
April 20	Dr. Adams, services to poor	3			$15 00	15 00
June 10	R. Bulger, services as trustee	4	$50 00			50 00
Aug. 7	R. Ramsey, services in case of Smith *v.* Township	5	25 00			25 00
Nov. 12	Robt. Clarke & Co., books and stat'y	6	20 00			20 00
"	A. Yost, building culvert	7		30 00		30 00
1874. Feb. 3	D. Brown, removing pauper	8			10 00	10 00
Feb. 22	A. Long, removing drift from Goose creek	9	16 00			16 00
	Total		$111 00	$205 00	$25 00	$341 00
Balance on hand at annual settlement.			$1,064 00	$440 00	$125 00	$1,629 00

The following is a correct statement of all the liabilities of the township to this date:

—— bonds, issued —— day of ——, 18—, due —— day of ——, 18—, interest at —— per cent, payable ——. Total, $——.

To —— ——, $——, for ——.

Total liabilities, $——.

Books to be provided for clerk.—In addition to the book for the record of the proceedings of the trustees, it is required that the clerk shall be, by the township, provided with a book for the record of township roads, a book for the record of marks and brands, and a book for the record of the official oaths and bonds for township officers. 1503.

To record official bonds.—It is required that all official bonds of justices of the peace, township treasurers, constables, and all other township officers, shall, so soon as approved by the trustees, and before being filed as the law requires, be recorded by the clerk of the township; and it is provided that a copy of such record, certified by the clerk, shall be admitted in any court of the state, as evidence, the same as the original bond. 5, 1506, 1507.

To act as clerk of election.—It is the duty of the township clerk to act as clerk of all general elections held in the township. In case of his failure to attend, the position may be filled by the electors present by a *viva voce* vote. 1442, 2935.

Notice to officers of election or appointment.—It is required that the clerk shall forthwith, after the election or appointment of township officers, make out a list of all the officers elected or appointed, stating the offices to which they are respectively chosen, and add thereto a requisition that they severally appear before him, or some other officer authorized to administer oaths, and take the oath of office, and give bond (if required by law to give bond), within ten days after such election. 1453.

Service of notice.—It is the duty of the clerk to personally deliver a copy of the list and requisition, to each person so elected, or to a constable, and of the constable to make service forthwith, by delivering to each person so elected or appointed a copy thereof, and of the clerk or constable to return the original to the clerk's office, with a statement thereon as to the time and manner of service, where it should be filed. 80 Laws 7. 1453.

No. 11. Form of Notice to Officers Elected.

The persons hereinafter named will take notice that they

were respectively elected to the offices specified after their respective names, at the township election held on Monday, the day of April, 18 , viz:

—— ——, *Trustee of this Township*
—— ——, *Clerk of this Township.*
—— ——, *Treasurer of this Township.*
—— ——, *Assessor of this Township.*
—— ——, } *Constables of this Township.*
—— ——, }
—— ——, }
—— ——, *Supervisor of Road District No.*
—— ——, *Supervisor of Road District No.*

And said persons are hereby severally required to appear before the undersigned, or some other officer authorized to administer oaths, and take the oath of office; and such of them as are by law required to give bond are hereby notified and required to give the necessary bond, within ten days from the date of said election, except the clerk [*or*, treasurer], who is required to give bond before the first day of September next.

Given this day of April, 18 .

—— ——,
Clerk of Township, County.

No. 12. Form of Constable's Return.

Received the within notice, and, on the day of , 18 , personally served the said , and , and , by delivering a true copy thereof to each of them respectively.

—— ——,
Constable of County.

Penalty for refusal to hold office.—It is provided that any person elected to a township office, who neglects or refuses to serve, shall forfeit and pay to and for the use of the township the sum of two dollars, to be recovered by an action before a justice of the peace of the township; and, in case of such neglect or refusal by any officer other than the

clerk, it is the duty of the latter to demand, receive, or sue for such forfeiture, and pay over the same, when collected, to the township treasurer; but no person can be compelled to serve in a township office two years in succession.[1] 1449.

If any person elected or appointed to a township office fails to take the oath, and give bond, if bond is required of him, within the time provided by law, he will be deemed to have declined to accept, and the vacancy is to be filled as in other cases. 1455.[2]

Record official oaths.—It is the duty of the clerk to make a record of the official oath of the township officers. whether the same be taken before himself or any other officer. In case it is taken before another officer, such officer is forthwith required to deposit with the clerk a certificate of the oath for record. 1454.

Record of township roads—Marks, brands, etc.—The clerk is required to record, in a book provided by him for that purpose, all such township roads as may be established by the trustees; and in another book, similarly provided, the ear-marks of cattle, sheep, and hogs, used by the owner or owners, and such other marks and brands as any person may wish to have recorded; but he must not record the same mark to two different persons. If demanded, he should deliver a certified copy of record of brands or marks to the owner. 1502.

To attest orders on treasurer.—No money belonging to the township can be paid out by the treasurer, except upon the order of the trustees, countersigned by the township clerk. 1512.

Orders, how issued, etc.—The usual and better plan is to keep an "order-book" similar to a merchant's check-book, with a blank for each order and a "stub" numbered to correspond, so that when the order is issued, the date, amount, and object thereof may be noted on the stub.

[1] Where a citizen was elected both a constable and a supervisor at the same election, and accepted and entered upon the duties of the latter office, it was held that he could not also be required to accept the office of constable. Township of Hartford *v.* Bennett, 10 Ohio St. 441.

[2] As amended, 85 Laws, 192.

No. 13. Form of Order.

Order No. , 18 . was given Fund. $	Order No. 18 . Treasurer of township, pay or order, dollars out of the township funds. And this shall be your voucher. —— —— —— —— —— —— $ —— ——, *T'p Trustees.* —— ——, *T'p Clerk.*

May administer oaths.—The clerk is authorized to administer any oath or affirmation, and to take and certify affidavits which may be necessary in, or pertain to, the business of his township, or which may be necessary in any official business of or with the trustees or board of education of the township, including the official oaths of township and school officers, and oaths required in the execution, verification, and renewal of chattel mortgages; also to administer oaths to judges and clerks of election, including the officers of primary elections held under the provisions of the statute. 1505, 2935, 2919.

Entitled to copy of laws and documents.—The clerk is entitled to receive a copy of acts of the general assembly for each year; of the journals of the senate and house of representatives and appendix, and one copy of each executive document published under the statutes; all of which books and documents he is required to deliver to his successor in office, under a penalty of not less than five nor more than fifteen dollars for a refusal so to do; the same to be recovered in an action brought by the successor in office before a justice of the peace. 68, 69.

Must deliver records, etc., to successor.—The clerk is required to deliver over to his successor in office all books, records, documents, laws, obligations, papers, blanks, and

all other articles and property belonging to his office or deposited with him in his official capacity; and if he refuses to deliver up the same, or any part thereof, becomes liable to a penalty of not less than five nor more than fifty dollars, to be recovered by action for the use of the township. 1529.

When office ceases.—Whenever the corporate limits of any city or village become identical with those of any township, then and thereafter the office of township clerk is abolished, and ceases to exist. The duties of the clerk in such case are to be performed by the clerk of the city or village. The township clerk must thereupon immediately deliver over to the city or village council a full statement of his accounts, together with the property, moneys, credits, books, records, accounts, files, vouchers, official bonds, and documents belonging to the township in his possession or under his control. 1623, 1625, 1626.

Fees of clerk.—For every hundred words of record required in the establishment of township roads to be open and kept in repair by the supervisor, the clerk is entitled to receive ten cents out of the township treasury, and for keeping the record of the proceedings of the trustees, stating and making copies of accounts and settlements, attending suits for or against the township, and for any other township business the trustees require him to perform, such reasonable compensation as they may allow; but in no one year can he be permitted to receive out of the township treasury more than one hundred and fifty dollars, except in Hamilton county the clerk may be allowed a compensation not to exceed six hundred dollars. He is also entitled to the following fees, to be paid by the parties requiring the service: Twenty-five cents for recording each mark or brand; ten cents for every hundred words of record required in the establishment of roads to be opened and repaired by the parties; ten cents for each hundred

words of records or copies in matters pertaining to partition fences, but not less than twenty-five cents for any one copy, to be paid out of the township treasury; fifty cents each for recording or furnishing certified copies of bonds of township officers; and ten cents per hundred words for recording or furnishing certified copies of indentures of apprenticeship.[1] 3124, 1508, 1531.

For recording deeds of cemetery lots, the statute clearly contemplates that he shall receive a compensation from the party receiving the deed, but does not fix the amount, and it would seem proper that the trustees should fix a reasonable amount to be paid for such service. 1467.

For services as clerk of election, he is entitled to one dollar and fifty cents, to be paid out of the township treasury, and for like services at a county or state election the same amount, to be paid out of the county treasury; provided, that if an election of district assessor or justice of the peace be held the same day of any general or other election, he is entitled to two dollars, but if there be two boards of judges and clerks conducting such election, he is entitled only to receive one dollar for his services. 2963.

Other duties are prescribed to the clerk for which he is entitled to compensation, but such duties and compensation will be found elsewhere herein more conveniently set forth, in connection with other topics.

Section 2. Of the Township Clerk's Duties as to the Public Schools.

The township clerk is, *ex-officio*, a member of the township board of education, but without the right to vote, and is also clerk of the board.

Bond and oath.—In addition to his bond to the township the clerk must give bond, in an amount and with surety approved by the board of education, payable to the State of Ohio, conditioned that he will faithfully perform all the official duties required of him. Such bond is to be depos-

[1] 78 Ohio Laws, 150.

ited with the president of the board, and a copy thereof, certified by him, filed with the county auditor. 4050.

No. 14. FORM OF BOND.

Know all men by these presents, that we, as principal, and as sureties, are held and firmly bound unto the State of Ohio, in the sum of dollars, to be paid to the state aforesaid, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

In testimony whereof, we have hereunto set our hands, this day of , A. D. 18 .

The condition of the above obligation is such that, whereas, the said has been duly elected and qualified as clerk of township, county, and State of Ohio, for the term of two years from the first day of September, A. D. 18 , and until his successor is elected, or appointed, and qualified, and is therefore *ex-officio* clerk of the board of education of the township district of said township.

Now, if the said shall perform faithfully all the official duties required of him as clerk of said board, then this obligation will be void; otherwise it will be and remain in full force and effect.

——— ———

——— ———

——— ———

The sureties on the above bond, and its amount, approved by said board.

Attest: ——— ———, *President of said Board.*

——— ———, *Clerk of said Board.*

The State of Ohio, county, township, ss:

Before me, , clerk of said township, personally came , who, being duly sworn according to law, says that he will support the constitution of the United States and the constitution of the State of Ohio; and that he will

faithfully discharge his duties as clerk of the board of education of the township district of township, county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

——— ———.

Sworn to before me, and signed in my presence, on this day of , A. D. 18 .

——— ———, *Township Clerk.*

Notice of school election.—In each township not divided into sub-districts, it is the duty of the clerk of the township to give notice of the time and place of election for school directors at least six days prior to the day of election, by written or printed notices posted in at least three conspicuous places in the township, designating the day and hour of opening and hour of closing the election. 3917.

To appoint director to fill in certain case.—If there be a vacancy in the office of school director for any sub-district, or in a township not divided into sub-districts, not filled at a special election, as provided by law, it is the duty of the township clerk to appoint a suitable resident of the sub-district to act as such director until the next election and qualification of his successor. 3919.

May call special meetings of board of education.—It is the duty of the township clerk to call special meetings of the board of education, when necessary, and of such meetings each member must be notified personally, or by written notice left at his usual place of residence. 3920.

To execute conveyances.—All conveyances of real estate are required to be executed by the president and clerk of the board of education. 3974.

May be served with summons.—In any suit against the board of education summons may be served upon the president or clerk. 3977.

Clerk pro tempore.—If the township clerk is absent from the organization, or any other meeting of the board of education, the board is required to appoint one of its mem-

bers clerk *pro tempore*, but on the appearance of the regular clerk at the meeting he is required to immediately assume the duties of the office. 3980, 3983.

Ayes and nays to be called.—Upon a motion to adopt a resolution authorizing the purchase or sale of property, either real or personal, or to employ a superintendent, teacher, janitor, or other employe, or to elect or appoint an officer, or to pay any debt or claim, or to adopt any text-book, the clerk is required to call the roll and record the ayes and nays, and any member may demand the ayes and nays on any other motion, and thereupon it is required that they shall be called and recorded. 3982.

Record of meetings.—It is the duty of the clerk to record the proceedings of each meeting in a book to be provided by the board for that purpose, and the same is a public record. The record of each meeting must be read at the next meeting, corrected, if necessary, and approved, and the approval noted in the proceedings; and, after such approval, it is to be signed by the president, and attested by the clerk 3984.

Statement of expenses by clerk.—The board of education must require the clerk annually, ten days prior to the election for members of the board, to make out and post up at the voting place or places, or publish in a newspaper of general circulation in the district, an itemized statement of the moneys received and disbursed by the treasurer of the board during the preceding year. 4053.

Annual report of the county auditor.—The board, through the clerk, must annually, on or before the first day of September in each year, make a report to the county auditor, upon blanks furnished by the state school commissioner, and by the auditor distributed to the various clerks. The report must contain a statement of the receipts and expenditures of the board, the number of schools sustained by them, the length of time such schools were sustained, the enrollment of pupils, the average monthly enrollment and average daily attendance, the number of teachers employed

their salaries, the number of school-houses and school rooms, and such other items as the state commissioner of common schools may require. It is also the duty of all school boards and officers to report directly to the state commissioner, upon blanks furnished by him, any statements, or items of information, relating to the schools, required by the commissioner. 4057,[1] 4058.[1]

Clerk liable for failure to make report.—In case the clerk of any board of education fails to make the annual returns of school statistics to the proper county auditor, he becomes liable on his bond, in the sum of not less than fifty nor more than three hundred dollars, on complaint of the auditor or the board of education—in either case to be recovered in a civil action in the name of the State of Ohio, and, when collected, to be paid into the county treasury, and applied to the use of the common schools in the proper district. And in case of such neglect by the clerk, it is the duty of the auditor to appoint a suitable person, resident in the school district, to make the report; and the person so appointed will be entitled to receive such compensation for the services as is allowed the clerk for like services. 4061, 4062.

Accounts of school funds, how kept.—It is the duty of the county auditor to furnish the clerk of each school district in his county with a suitable blank book, made according to a form prescribed by the state commissioner of common schools, in which it is the duty of the clerk to keep an account of the school funds of his district, showing the amounts certified by the county auditor to be due the district, all sums paid to the treasurer from other sources on his order, and all orders drawn by him on the treasurer, and upon what funds and for what purposes drawn. A separate account of each fund is required to be kept, each account to be balanced at the close of the school year, and the balance in the treasurer's hands belonging to each fund shown. 4055.

Orders on treasurer.—No treasurer of school funds can

[1] As amended, 85 Laws, 192.

pay out school money except upon a written order signed by the president of the board, and countersigned by the clerk. The same plan should be pursued as with orders for township funds above mentioned in this chapter. The order should show that it is for school funds, and state the purpose for which it was drawn.[1] 4047.

No. 15. FORM OF ORDER.

Order No. 18 . was given Fund. $	Order No. , 18 . Treasurer of township, pay , or order, dollars, out of the school funds of said township for , and this shall be your voucher. ——— — ———, *Pres't Board of Education.* ——— ———, *Clerk Board of Education.*

Moneys paid to treasurer on order of clerk.—No money can be paid to the treasurer of a board of education, other than that received from the county treasurer, except by or upon the order of the clerk of the board; and it is the duty of the clerk to report the amount of such miscellaneous receipts to the county auditor each year, immediately preceding such treasurer's settlement with the auditor. 4047.

Clerk to furnish statement of funds to treasurer.—It is the duty of the clerk to furnish the treasurer with a statement, showing the amount of school funds in the treasurer's

[1] An order drawn by the clerk of the board of education, under the statute, in favor of a third person, or bearer, on the town ship treasurer, is not negotiable, and a purchaser takes such order subject to the same defenses that could be made against it in the hands of the payee. The State ex rel. *v.* Liberty Tp., 22 Ohio St. 144.

hands, as shown by the clerk's books, at any time it may be necessary for the treasurer to draw money from the county treasury, as the treasurer must exhibit such a statement to the auditor before a warrant can be drawn in his favor by that officer. 4048.

No. 16. Form of Statement.

To the Auditor of County.

Dear Sir:—I hereby certify that the entire amount of school funds in the hands of , treasurer of this township, at this the date above mentioned, is the sum of dollars, as shown by the books of my office.

——— ———,

Clerk of Township Board of Education.

Orders for teachers' pay.—It is unlawful for the clerk to draw an order on the treasurer for the payment of a teacher for services, unless the teacher has first filed with such clerk the reports required by the state commissioner of common schools and the board of education, a legal certificate of qualification, or a true copy thereof, covering the entire time of the services for the payment of which the order is drawn, and the branches which such teacher has taught; but orders may be drawn for the payment of special teachers of drawing, painting, penmanship, music, gymnastics, or any foreign language, on presentation to the clerk of a certificate, signed by a majority of the board of examiners, and the filing with him of a true copy thereof, covering the time for which the special teacher has been employed, and the specialty taught. 4051.

Report treasurer's bond to auditor.—Immediately after the filing of a bond by the treasurer of school funds, it is the duty of the clerk to transmit to the county auditor a certified copy thereof. 4043.

Record of funds in treasury.—At the time of the approval of the treasurer's bond it is the duty of the board to require the treasurer to produce all money, bonds, or other

securities in his hands, as such treasurer, and to count the same in the presence of the clerk, who is required to enter the exact amount of money or securities so found in the hands of the treasurer upon the records of the board, which certificate shall be signed by the president and clerk, and shall be *prima facie* evidence that the amount therein stated was actually in the treasury at that date. 4043.

Liable for failure as to enumeration.—If the clerk of any district fail to transmit the abstract of enumeration on or before the second Monday of October, the auditor should at once demand the same from such clerk, and in case the enumeration has not been taken, or the abstract be not furnished without delay, it is the duty of the auditor to employ competent persons to take the enumeration, and allow him a reasonable compensation, the amount of which it is the auditor's duty to proceed to recover in a civil action before any court of competent jurisdiction, in the name of the state against such clerk on his bond. 4036.

Pay of clerk.—The compensation of the clerk is to be fixed by the board at such amount as they may deem reasonable, to be paid out of the contingent fund, on the order of the board: but before the order for pay can be made, he must present to the board a statement, officially signed and certified by the auditor, that he has returned all the reports of statistics for that year required by law. 4056.[1]

Delivery of records at expiration of term.—It is the duty of the clerk, at the expiration of his term of office, to deliver to his successor all books and papers in his hands relating to the affairs of his district, including certificates, and copies thereof, and reports of school statistics filed by teachers. 4054.

The clerk of the board of examiners is required to file with the township clerk, within ten days after each meeting, a statement of the amount of examination fees by him received and paid over to the treasurer; also a statement of the number of applicants, male and female, examined; the number of certificates granted, and for what terms. 4083, as amended, 85 Laws, 196.

[1] 80 Ohio Laws, 95, and 85 Laws, 192.

For the act relating to the election of directors of the agricultural society in Montgomery county, and duties of the clerk in that connection, see 87 Laws, 135.

CHAPTER VII.

CONSTABLES.

Election.—Constables are elected on the first Monday of April, for the term of three years, and continue in office until their successors are elected and qualified. 1448.[1]

Number of.—The number to be elected in any township is determined by the trustees. 1448.

Official oath.—Within ten days after his election, and before entering upon the duties of his office, each constable must take an oath or affirmation, before an officer authorized by law to administer the same, to support the constitution of the United States and of the State of Ohio, that he will faithfully discharge the duties of his office. 3, 1453, 1516.

Bond.—At the same time, the constable is required to give a bond to the State of Ohio, in a sum not less than five hundred nor more than two thousand dollars, with sureties resident in the township, such as the trustees shall approve, conditioned for the faithful and diligent discharge of his duties.[1] 1516.

No. 17. Form of Constable's Bond and Oath.

Know all men by these presents, that we, , as principal, and , as sureties, are held and firmly bound

[1]As amended, 85 Laws, 131.

The fact that a constable's bond was given more than ten days after his election, does not necessarily render it invalid. Westerhaven *v.* Clive, 5 Ohio, 136.

Parol testimony may be received to contradict the entry of the township clerk to the effect that a constable's bond has been accepted. Ibid.

unto the State of Ohio, in the sum of dollars, to be paid to the state aforesaid, for the payment whereof, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents.

In testimony whereof, we have hereunto set our hands, this day of , A. D. eighteen hundred and .

The condition of the above obligation is such that—

Whereas, the said has been duly elected and qualified as constable of township, county, and State of Ohio, for the term of three years from the day of April, A. D. 18 , and until his successor is elected or appointed and qualified.

Now, if the said shall faithfully and diligently discharge his duties as said constable, then this obligation will be void; otherwise, it will be and remain in full force and effect.

____ _____

____ _____

____ _____

The sureties on the above bond, and its amount, approved by us:

____ _____,

____ _____,

____ _____,

Trustees of said Township.

The State of Ohio, County, Township, ss.:

Before me, , clerk of said township, personally came , who, being duly sworn according to law, says that he will support the constitution of the United States and the constitution of the State of Ohio, and that he will faithfully discharge his duties as constable of township, county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

____ _____,

Sworn to before me, and signed in my presence, on this day of , A. D. 18 .

——— ———,
Township Clerk.

Though not required by the statute, it is the customary as well as the more convenient plan to have the bond and oath on the same paper, so that they may be filed and kept together.

Filing and record of bond.—When the bond has been given to the satisfaction of the trustees, the clerk must make an entry of the same, and file and record it in his office. 1506, 1516.

Vacancy.—When a vacancy occurs in the office of constable, from any reason, the trustees must appoint a suitable person to fill the vacancy until the next annual election, and until a successor shall be elected and qualified. The constable so appointed must take a like oath, and give a like bond, to that which is required of constables in other cases. In any case where there is no constable in a township, the constable of any adjoining township in the county may serve any process that the constable of the first mentioned township is now or may be authorized to serve by law. 6683, 6684.

How sureties may be released.—If the constable shall neglect or refuse, on demand made for that purpose by the person entitled thereto, his agent or attorney, to pay all moneys received by him in his official capacity, for the use of such person, any surety of the constable may give notice to the trustees of the refusal or neglect of the constable to pay over such moneys, and that he is unwilling to continue as security for such constable. 5839.

New bond must be required.—Upon the receipt of such notice, the trustees must immediately inform the constable in writing of the refusal of his surety to continue as such, and that he is required to give a new bond or undertaking, conditioned according to law. 5840.

No. 18. Form of Notice to Constable.

To , *Constable of* *Township:*

You are hereby notified that , surety upon your official bond, is unwilling, and has refused to continue as such. You are therefore required to give a new bond, conditioned according to law, within ten days from the receipt of this notice, to the satisfaction of the trustees of said township, or your office will be considered vacant.

Given at , this day of , A. D. 18 .

——— ———,
——— ———,
——— ———,
Trustees of *Township.*

——— ———, *Clerk.*

The foregoing notice should be served personally, and a copy thereof returned to the clerk, with the statement of the time and manner of the service, and the name of the person making such service noted thereon.

New bond operates as release.—If the constable gives the new bond, to the satisfaction of the trustees, within ten days after receiving such notice, the sureties upon the first undertaking must be released from all further liability thereon. 5840.

Vacancy caused by failure to give new bond.—If the constable fail to give a new bond within ten days after receipt of notice, such failure is to be deemed a resignation of the office, and the trustees must proceed to fill the vacancy, as in other cases. 5840.

Duty to release in such case.—It is to be observed that the foregoing provisions as to sureties provide for their release in one contingency only, that of a refusal or neglect of the constable to pay over moneys received by him in his official capacity, to the proper person; but if that contingency arises, the trustees, upon proper notice being

given, have no discretion, and must release the sureties in the manner provided.

There is, however, another and similar provision whereby the sureties may apply for release *for any reason* which they may deem sufficient. In that case, it seems to rest in the discretion of the trustees to determine whether they will require new or other sureties, and release those on the existing bond.[1]

To post up warrant for election.—Upon receipt of the warrant to notify the electors of the annual meeting, the constable must set up copies of the same in at least three public places in the township, at least ten days before the time specified for such meeting. 1446.

To serve copies of election list.—Upon receipt from the clerk of the list of officers elected at the township election, it is the duty of the constable to forthwith serve each of the persons specified with a notice of his election, requiring him to appear before a justice of the peace or the township clerk within ten days from that date to take the oath of office. 1453.

Manner of service.—A copy of the list is required to be served on each of the persons elected personally, and the original list returned to the clerk, with the time and manner of service noted thereon. 1453.

Compensation of constable.—The trustees must allow the constable a reasonable compensation for serving notices and publishing the warrant above mentioned, to be paid out of the treasury, on the order of the trustees, attested by the clerk. 1534.

In cities.—The office of constable does not cease to exist when a township becomes part of a city or village; but the city or village council in general perform the functions of the trustees, and the clerk's duties are performed by the clerk of the corporation. 1623, 1625.

Entitled to copy of laws.—The constable is entitled to

[1] See ante, Chap. IV.—"Bonds."

receive a copy of each volume of the laws passed by the general assembly, and must deliver them to his successor in office, under a penalty of a fine of from five to fifteen dollars, upon conviction of refusal to do so. 69.

Only that portion of the law relating to constables which connects them directly with the township, or with other township officers, comes within the scope of this work, and any further information as to their general rights and duties is to be sought for in the statutes themselves, or in works especially devoted to the subject.

their salaries, the number of school-houses and school rooms, and such other items as the state commissioner of common schools may require. It is also the duty of all school boards and officers to report directly to the state commissioner, upon blanks furnished by him, any statements, or items of information, relating to the schools, required by the commissioner. 4057,[1] 4058.[1]

Clerk liable for failure to make report.—In case the clerk of any board of education fails to make the annual returns of school statistics to the proper county auditor, he becomes liable on his bond, in the sum of not less than fifty nor more than three hundred dollars, on complaint of the auditor or the board of education—in either case to be recovered in a civil action in the name of the State of Ohio, and, when collected, to be paid into the county treasury, and applied to the use of the common schools in the proper district. And in case of such neglect by the clerk, it is the duty of the auditor to appoint a suitable person, resident in the school district, to make the report; and the person so appointed will be entitled to receive such compensation for the services as is allowed the clerk for like services. 4061, 4062.

Accounts of school funds, how kept.—It is the duty of the county auditor to furnish the clerk of each school district in his county with a suitable blank book, made according to a form prescribed by the state commissioner of common schools, in which it is the duty of the clerk to keep an account of the school funds of his district, showing the amounts certified by the county auditor to be due the district, all sums paid to the treasurer from other sources on his order, and all orders drawn by him on the treasurer, and upon what funds and for what purposes drawn. A separate account of each fund is required to be kept, each account to be balanced at the close of the school year, and the balance in the treasurer's hands belonging to each fund shown. 4055.

Orders on treasurer.—No treasurer of school funds can

[1] As amended, 85 Laws, 192.

pay out school money except upon a written order signed by the president of the board, and countersigned by the clerk. The same plan should be pursued as with orders for township funds above mentioned in this chapter. The order should show that it is for school funds, and state the purpose for which it was drawn.[1] 4047.

No. 15. FORM OF ORDER.

Order No. 18 . was given Fund. $	Order No. , 18 . Treasurer of township, pay , or order, dollars, out of the school funds of said township for , and this shall be your voucher. ——— — ———, *Pres't Board of Education.* ——— ———, *Clerk Board of Education.*

Moneys paid to treasurer on order of clerk.—No money can be paid to the treasurer of a board of education, other than that received from the county treasurer, except by or upon the order of the clerk of the board; and it is the duty of the clerk to report the amount of such miscellaneous receipts to the county auditor each year, immediately preceding such treasurer's settlement with the auditor. 4047.

Clerk to furnish statement of funds to treasurer.—It is the duty of the clerk to furnish the treasurer with a statement, showing the amount of school funds in the treasurer's

[1] An order drawn by the clerk of the board of education, under the statute, in favor of a third person, or bearer, on the town ship treasurer, is not negotiable, and a purchaser takes such order subject to the same defenses that could be made against it in the hands of the payee. The State ex rel. *v.* Liberty Tp., 22 Ohio St. 144.

hands, as shown by the clerk's books, at any time it may be necessary for the treasurer to draw money from the county treasury, as the treasurer must exhibit such a statement to the auditor before a warrant can be drawn in his favor by that officer. 4048.

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To the Auditor of County.

Dear Sir:—I hereby certify that the entire amount of school funds in the hands of , treasurer of this township, at this the date above mentioned, is the sum of dollars, as shown by the books of my office.

——— ———,

Clerk of Township Board of Education.

Orders for teachers' pay.—It is unlawful for the clerk to draw an order on the treasurer for the payment of a teacher for services, unless the teacher has first filed with such clerk the reports required by the state commissioner of common schools and the board of education, a legal certificate of qualification, or a true copy thereof, covering the entire time of the services for the payment of which the order is drawn, and the branches which such teacher has taught; but orders may be drawn for the payment of special teachers of drawing, painting, penmanship, music, gymnastics, or any foreign language, on presentation to the clerk of a certificate, signed by a majority of the board of examiners, and the filing with him of a true copy thereof, covering the time for which the special teacher has been employed, and the specialty taught. 4051.

Report treasurer's bond to auditor.—Immediately after the filing of a bond by the treasurer of school funds, it is the duty of the clerk to transmit to the county auditor a certified copy thereof. 4043.

Record of funds in treasury.—At the time of the approval of the treasurer's bond it is the duty of the board to require the treasurer to produce all money, bonds, or other

securities in his hands, as such treasurer, and to count the same in the presence of the clerk, who is required to enter the exact amount of money or securities so found in the hands of the treasurer upon the records of the board, which certificate shall be signed by the president and clerk, and shall be *prima facie* evidence that the amount therein stated was actually in the treasury at that date. 4043.

Liable for failure as to enumeration.—If the clerk of any district fail to transmit the abstract of enumeration on or before the second Monday of October, the auditor should at once demand the same from such clerk, and in case the enumeration has not been taken, or the abstract be not furnished without delay, it is the duty of the auditor to employ competent persons to take the enumeration, and allow him a reasonable compensation, the amount of which it is the auditor's duty to proceed to recover in a civil action before any court of competent jurisdiction, in the name of the state against such clerk on his bond. 4036.

Pay of clerk.—The compensation of the clerk is to be fixed by the board at such amount as they may deem reasonable, to be paid out of the contingent fund, on the order of the board: but before the order for pay can be made, he must present to the board a statement, officially signed and certified by the auditor, that he has returned all the reports of statistics for that year required by law. 4056.[1]

Delivery of records at expiration of term.—It is the duty of the clerk, at the expiration of his term of office, to deliver to his successor all books and papers in his hands relating to the affairs of his district, including certificates, and copies thereof, and reports of school statistics filed by teachers. 4054.

The clerk of the board of examiners is required to file with the township clerk, within ten days after each meeting, a statement of the amount of examination fees by him received and paid over to the treasurer; also a statement of the number of applicants, male and female, examined; the number of certificates granted, and for what terms. 4083, as amended, 85 Laws, 196.

[1] 80 Ohio Laws, 95, and 85 Laws, 192.

For the act relating to the election of directors of the agricultural society in Montgomery county, and duties of the clerk in that connection, see 87 Laws, 135.

CHAPTER VII.

CONSTABLES.

Election.—Constables are elected on the first Monday of April, for the term of three years, and continue in office until their successors are elected and qualified. 1448.[1]

Number of.—The number to be elected in any township is determined by the trustees. 1448.

Official oath.—Within ten days after his election, and before entering upon the duties of his office, each constable must take an oath or affirmation, before an officer authorized by law to administer the same, to support the constitution of the United States and of the State of Ohio, that he will faithfully discharge the duties of his office. 3, 1453, 1516.

Bond.—At the same time, the constable is required to give a bond to the State of Ohio, in a sum not less than five hundred nor more than two thousand dollars, with sureties resident in the township, such as the trustees shall approve, conditioned for the faithful and diligent discharge of his duties.[1] 1516.

No. 17. Form of Constable's Bond and Oath.

Know all men by these presents, that we, , as principal, and , as sureties, are held and firmly bound

[1]As amended, 85 Laws, 131.

The fact that a constable's bond was given more than ten days after his election, does not necessarily render it invalid. Westerhaven *v.* Clive, 5 Ohio, 136.

Parol testimony may be received to contradict the entry of the township clerk to the effect that a constable's bond has been accepted. Ibid.

unto the State of Ohio, in the sum of dollars, to be paid to the state aforesaid, for the payment whereof, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents.

In testimony whereof, we have hereunto set our hands, this day of , A. D. eighteen hundred and .

The condition of the above obligation is such that—

Whereas, the said has been duly elected and qualified as constable of township, county, and State of Ohio, for the term of three years from the day of April, A. D. 18 , and until his successor is elected or appointed and qualified.

Now, if the said shall faithfully and diligently discharge his duties as said constable, then this obligation will be void; otherwise, it will be and remain in full force and effect.

____ _____.
____ _____.
____ _____.

The sureties on the above bond, and its amount, approved by us:

____ _____,
____ _____,
____ _____,

Trustees of said Township.

The State of Ohio, County, Township, ss.:

Before me, , clerk of said township, personally came , who, being duly sworn according to law, says that he will support the constitution of the United States and the constitution of the State of Ohio, and that he will faithfully discharge his duties as constable of township, county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

____ _____,

Sworn to before me, and signed in my presence, on this day of , A. D. 18 .

——— ———,
Township Clerk.

Though not required by the statute, it is the customary as well as the more convenient plan to have the bond and oath on the same paper, so that they may be filed and kept together.

Filing and record of bond.—When the bond has been given to the satisfaction of the trustees, the clerk must make an entry of the same, and file and record it in his office. 1506, 1516.

Vacancy.—When a vacancy occurs in the office of constable, from any reason, the trustees must appoint a suitable person to fill the vacancy until the next annual election, and until a successor shall be elected and qualified. The constable so appointed must take a like oath, and give a like bond, to that which is required of constables in other cases. In any case where there is no constable in a township, the constable of any adjoining township in the county may serve any process that the constable of the first mentioned township is now or may be authorized to serve by law. 6683, 6684.

How sureties may be released.—If the constable shall neglect or refuse, on demand made for that purpose by the person entitled thereto, his agent or attorney, to pay all moneys received by him in his official capacity, for the use of such person, any surety of the constable may give notice to the trustees of the refusal or neglect of the constable to pay over such moneys, and that he is unwilling to continue as security for such constable. 5839.

New bond must be required.—Upon the receipt of such notice, the trustees must immediately inform the constable in writing of the refusal of his surety to continue as such, and that he is required to give a new bond or undertaking, conditioned according to law. 5840.

No. 18. Form of Notice to Constable.

To , *Constable of* *Township:*

You are hereby notified that , surety upon your official bond, is unwilling, and has refused to continue as such. You are therefore required to give a new bond, conditioned according to law, within ten days from the receipt of this notice, to the satisfaction of the trustees of said township, or your office will be considered vacant.

Given at , this day of , A. D. 18 .

——— ———,
——— ———,
——— ———,
Trustees of *Township.*

——— ———, *Clerk.*

The foregoing notice should be served personally, and a copy thereof returned to the clerk, with the statement of the time and manner of the service, and the name of the person making such service noted thereon.

New bond operates as release.—If the constable gives the new bond, to the satisfaction of the trustees, within ten days after receiving such notice, the sureties upon the first undertaking must be released from all further liability thereon. 5840.

Vacancy caused by failure to give new bond.—If the constable fail to give a new bond within ten days after receipt of notice, such failure is to be deemed a resignation of the office, and the trustees must proceed to fill the vacancy, as in other cases. 5840.

Duty to release in such case.—It is to be observed that the foregoing provisions as to sureties provide for their release in one contingency only, that of a refusal or neglect of the constable to pay over moneys received by him in his official capacity, to the proper person; but if that contingency arises, the trustees, upon proper notice being

faithfully discharge his duties as clerk of the board of education of the township district of township, county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

——— ———.

Sworn to before me, and signed in my presence, on this day of , A. D. 18 .

——— ———, *Township Clerk.*

Notice of school election.—In each township not divided into sub-districts, it is the duty of the clerk of the township to give notice of the time and place of election for school directors at least six days prior to the day of election, by written or printed notices posted in at least three conspicuous places in the township, designating the day and hour of opening and hour of closing the election. 3917.

To appoint director to fill in certain case.—If there be a vacancy in the office of school director for any sub-district, or in a township not divided into sub-districts, not filled at a special election, as provided by law, it is the duty of the township clerk to appoint a suitable resident of the sub-district to act as such director until the next election and qualification of his successor. 3919.

May call special meetings of board of education.—It is the duty of the township clerk to call special meetings of the board of education, when necessary, and of such meetings each member must be notified personally, or by written notice left at his usual place of residence. 3920.

To execute conveyances.—All conveyances of real estate are required to be executed by the president and clerk of the board of education. 3974.

May be served with summons.—In any suit against the board of education summons may be served upon the president or clerk. 3977.

Clerk pro tempore.—If the township clerk is absent from the organization, or any other meeting of the board of education, the board is required to appoint one of its mem-

receive a copy of each volume of the laws passed by the general assembly, and must deliver them to his successor in office, under a penalty of a fine of from five to fifteen dollars, upon conviction of refusal to do so. 69.

Only that portion of the law relating to constables which connects them directly with the township, or with other township officers, comes within the scope of this work, and any further information as to their general rights and duties is to be sought for in the statutes themselves, or in works especially devoted to the subject.

their salaries, the number of school-houses and school rooms, and such other items as the state commissioner of common schools may require. It is also the duty of all school boards and officers to report directly to the state commissioner, upon blanks furnished by him, any statements, or items of information, relating to the schools, required by the commissioner. 4057,[1] 4058.[1]

Clerk liable for failure to make report.—In case the clerk of any board of education fails to make the annual returns of school statistics to the proper county auditor, he becomes liable on his bond, in the sum of not less than fifty nor more than three hundred dollars, on complaint of the auditor or the board of education—in either case to be recovered in a civil action in the name of the State of Ohio, and, when collected, to be paid into the county treasury, and applied to the use of the common schools in the proper district. And in case of such neglect by the clerk, it is the duty of the auditor to appoint a suitable person, resident in the school district, to make the report; and the person so appointed will be entitled to receive such compensation for the services as is allowed the clerk for like services. 4061, 4062.

Accounts of school funds, how kept.—It is the duty of the county auditor to furnish the clerk of each school district in his county with a suitable blank book, made according to a form prescribed by the state commissioner of common schools, in which it is the duty of the clerk to keep an account of the school funds of his district, showing the amounts certified by the county auditor to be due the district, all sums paid to the treasurer from other sources on his order, and all orders drawn by him on the treasurer, and upon what funds and for what purposes drawn. A separate account of each fund is required to be kept, each account to be balanced at the close of the school year, and the balance in the treasurer's hands belonging to each fund shown. 4055.

Orders on treasurer.—No treasurer of school funds can

[1] As amended, 85 Laws, 192.

Meaning of word "ditch," and application of these provisions.—It is provided that the word "ditch," when used in the chapter of the revised statutes relating to township ditches, shall include a drain or water-course, and that the petition for any such improvement shall be held to include any side, lateral, spur, or branch ditch, drain, or water-course, necessary to be constructed to secure the object of the improvement, whether the same is mentioned in the petition or not; and that the provisions of the statutes relating to township ditches shall extend to and include the straightening of streams and water-courses. 4512.

Power to establish.—The trustees have the power, whenever in their opinion the same will be conducive to the public health, convenience or welfare, to cause any ditch to be established, located, and constructed, according to the following provisions, within the township,[1] and for that purpose, may cross a railroad, turnpike road, or do any other thing necessary or proper to promote said purpose. 4511.

Petition.—Before any steps are taken for that purpose, a petition from one or more persons owning lands adjacent to the line of the proposed ditch, drain, or water-course, must be filed with the clerk.[2] 4514.

What petition must contain.—Such petition must set forth the necessity of the ditch, drain, or water-course, with a substantial description of its proposed starting point, route, and terminus.[2] 4514.

No. 19. Form of Petition.

To the Board of Trustees of Township, County, Ohio:

Your petitioners, residents of said township, and owning lands adjacent to the route hereinafter described, respectfully represent that the public health, welfare, and convenience require the establishment and construction of

meaning of the "police purposes" mentioned in the constitution. Sessions *v.* Crunkilton, 20 Ohio St. 349.

[1] 78 Ohio Laws, 209.

[2] See note, p. 64.

hands, as shown by the clerk's books, at any time it may be necessary for the treasurer to draw money from the county treasury, as the treasurer must exhibit such a statement to the auditor before a warrant can be drawn in his favor by that officer. 4048.

No. 16. FORM OF STATEMENT.

To the Auditor of County.

DEAR SIR:—I hereby certify that the entire amount of school funds in the hands of , treasurer of this township, at this the date above mentioned, is the sum of dollars, as shown by the books of my office.

——— ———,

Clerk of Township Board of Education.

Orders for teachers' pay.—It is unlawful for the clerk to draw an order on the treasurer for the payment of a teacher for services, unless the teacher has first filed with such clerk the reports required by the state commissioner of common schools and the board of education, a legal certificate of qualification, or a true copy thereof, covering the entire time of the services for the payment of which the order is drawn, and the branches which such teacher has taught; but orders may be drawn for the payment of special teachers of drawing, painting, penmanship, music, gymnastics, or any foreign language, on presentation to the clerk of a certificate, signed by a majority of the board of examiners, and the filing with him of a true copy thereof, covering the time for which the special teacher has been employed, and the specialty taught. 4051.

Report treasurer's bond to auditor.—Immediately after the filing of a bond by the treasurer of school funds, it is the duty of the clerk to transmit to the county auditor a certified copy thereof. 4043.

Record of funds in treasury.—At the time of the approval of the treasurer's bond it is the duty of the board to require the treasurer to produce all money, bonds, or other

securities in his hands, as such treasurer, and to count the same in the presence of the clerk, who is required to enter the exact amount of money or securities so found in the hands of the treasurer upon the records of the board, which certificate shall be signed by the president and clerk, and shall be *prima facie* evidence that the amount therein stated was actually in the treasury at that date. 4043.

Liable for failure as to enumeration.—If the clerk of any district fail to transmit the abstract of enumeration on or before the second Monday of October, the auditor should at once demand the same from such clerk, and in case the enumeration has not been taken, or the abstract be not furnished without delay, it is the duty of the auditor to employ competent persons to take the enumeration, and allow him a reasonable compensation, the amount of which it is the auditor's duty to proceed to recover in a civil action before any court of competent jurisdiction, in the name of the state against such clerk on his bond. 4036.

Pay of clerk.—The compensation of the clerk is to be fixed by the board at such amount as they may deem reasonable, to be paid out of the contingent fund, on the order of the board: but before the order for pay can be made, he must present to the board a statement, officially signed and certified by the auditor, that he has returned all the reports of statistics for that year required by law. 4056.[1]

Delivery of records at expiration of term.—It is the duty of the clerk, at the expiration of his term of office, to deliver to his successor all books and papers in his hands relating to the affairs of his district, including certificates, and copies thereof, and reports of school statistics filed by teachers. 4054.

The clerk of the board of examiners is required to file with the township clerk, within ten days after each meeting, a statement of the amount of examination fees by him received and paid over to the treasurer; also a statement of the number of applicants, male and female, examined; the number of certificates granted, and for what terms. 4083, as amended, 85 Laws, 196.

80 Ohio Laws, 95, and 85 Laws, 192.

For the act relating to the election of directors of the agricultural society in Montgomery county, and duties of the clerk in that connection, see 87 Laws, 135.

CHAPTER VII.

CONSTABLES.

Election.—Constables are elected on the first Monday of April, for the term of three years, and continue in office until their successors are elected and qualified. 1448.[1]

Number of.—The number to be elected in any township is determined by the trustees. 1448.

Official oath.—Within ten days after his election, and before entering upon the duties of his office, each constable must take an oath or affirmation, before an officer authorized by law to administer the same, to support the constitution of the United States and of the State of Ohio, that he will faithfully discharge the duties of his office. 3, 1453, 1516.

Bond.—At the same time, the constable is required to give a bond to the State of Ohio, in a sum not less than five hundred nor more than two thousand dollars, with sureties resident in the township, such as the trustees shall approve, conditioned for the faithful and diligent discharge of his duties.[1] 1516.

No. 17. Form of Constable's Bond and Oath.

Know all men by these presents, that we, , as principal, and , as sureties, are held and firmly bound

[1]As amended, 85 Laws, 131.

The fact that a constable's bond was given more than ten days after his election, does not necessarily render it invalid. Westerhaven *v.* Clive, 5 Ohio, 136.

Parol testimony may be received to contradict the entry of the township clerk to the effect that a constable's bond has been accepted. Ibid.

unto the State of Ohio, in the sum of dollars, to be paid to the state aforesaid, for the payment whereof, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents.

In testimony whereof, we have hereunto set our hands, this day of , A. D. eighteen hundred and .

The condition of the above obligation is such that—

Whereas, the said has been duly elected and qualified as constable of township, county, and State of Ohio, for the term of three years from the day of April, A. D. 18 , and until his successor is elected or appointed and qualified.

Now, if the said shall faithfully and diligently discharge his duties as said constable, then this obligation will be void; otherwise, it will be and remain in full force and effect.

____ _____

____ _____

____ _____

he sureties on the above bond, and its amount, approved by us:

____ _____,

____ _____,

____ _____,

Trustees of said Township.

e State of Ohio, County, Township, ss.:

Before me, , clerk of said township, personally me , who, being duly sworn according to law, says at he will support the constitution of the United States d the constitution of the State of Ohio, and that he will thfully discharge his duties as constable of township, county, Ohio, during his continuance in said ce, and until his successor is chosen and qualified.

____ _____,

Sworn to before me, and signed in my presence, on this day of , A. D. 18 .

——— ———,
Township Clerk.

Though not required by the statute, it is the customary as well as the more convenient plan to have the bond and oath on the same paper, so that they may be filed and kept together.

Filing and record of bond.—When the bond has been given to the satisfaction of the trustees, the clerk must make an entry of the same, and file and record it in his office. 1506, 1516.

Vacancy.—When a vacancy occurs in the office of constable, from any reason, the trustees must appoint a suitable person to fill the vacancy until the next annual election, and until a successor shall be elected and qualified. The constable so appointed must take a like oath, and give a like bond, to that which is required of constables in other cases. In any case where there is no constable in a township, the constable of any adjoining township in the county may serve any process that the constable of the first mentioned township is now or may be authorized to serve by law. 6683, 6684.

How sureties may be released.—If the constable shall neglect or refuse, on demand made for that purpose by the person entitled thereto, his agent or attorney, to pay all moneys received by him in his official capacity, for the use of such person, any surety of the constable may give notice to the trustees of the refusal or neglect of the constable to pay over such moneys, and that he is unwilling to continue as security for such constable. 5839.

New bond must be required.—Upon the receipt of such notice, the trustees must immediately inform the constable in writing of the refusal of his surety to continue as such, and that he is required to give a new bond or undertaking, conditioned according to law. 5840.

No. 18. Form of Notice to Constable.

To , Constable of Township:

You are hereby notified that , surety upon our official bond, is unwilling, and has refused to ontinue as such. You are therefore required to give a ew bond, conditioned according to law, within ten days om the receipt of this notice, to the satisfaction of the ustees of said township, or your office will be considered acant.

Given at , this day of , A. D. 18 .

——— ———,
——— ———,
——— ———,
Trustees of Township.

——— ———, *Clerk.*

The foregoing notice should be served personally, and a py thereof returned to the clerk, with the statement of e time and manner of the service, and the name of the rson making such service noted thereon.

New bond operates as release.—If the constable gives the w bond, to the satisfaction of the trustees, within ten ys after receiving such notice, the sureties upon the first dertaking must be released from all further liability reon. 5840.

Vacancy caused by failure to give new bond.—If the conble fail to give a new bond within ten days after reit of notice, such failure is to be deemed a resignation he office, and the trustees must proceed to fill the vacy, as in other cases. 5840.

Duty to release in such case.—It is to be observed that foregoing provisions as to sureties provide for their ase in one contingency only, that of a refusal or negof the constable to pay over moneys received by him is official capacity, to the proper person; but if that ingency arises, the trustees, upon proper notice being

given, have no discretion, and must release the sureties in the manner provided.

There is, however, another and similar provision whereby the sureties may apply for release *for any reason* which they may deem sufficient. In that case, it seems to rest in the discretion of the trustees to determine whether they will require new or other sureties, and release those on the existing bond.[1]

To post up warrant for election.—Upon receipt of the warrant to notify the electors of the annual meeting, the constable must set up copies of the same in at least three public places in the township, at least ten days before the time specified for such meeting. 1446.

To serve copies of election list.—Upon receipt from the clerk of the list of officers elected at the township election, it is the duty of the constable to forthwith serve each of the persons specified with a notice of his election, requiring him to appear before a justice of the peace or the township clerk within ten days from that date to take the oath of office. 1453.

Manner of service.—A copy of the list is required to be served on each of the persons elected personally, and the original list returned to the clerk, with the time and manner of service noted thereon. 1453.

Compensation of constable.—The trustees must allow the constable a reasonable compensation for serving notices and publishing the warrant above mentioned, to be paid out of the treasury, on the order of the trustees, attested by the clerk. 1534.

In cities.—The office of constable does not cease to exist when a township becomes part of a city or village; but the city or village council in general perform the functions of the trustees, and the clerk's duties are performed by the clerk of the corporation. 1623, 1625.

Entitled to copy of laws.—The constable is entitled to

[1] See ante, Chap. IV.—"Bonds."

ceive a copy of each volume of the laws passed by the general assembly, and must deliver them to his successor n office, under a penalty of a fine of from five to fifteen ollars, upon conviction of refusal to do so. 69.

Only that portion of the law relating to constables which onnects them directly with the township, or with other ownship officers, comes within the scope of this work, and ny further information as to their general rights and duies is to be sought for in the statutes themselves, or in orks especially devoted to the subject.

CHAPTER VIII.

DITCHES, DRAINS, AND WATER-COURSES.

SEC. 1. LOCATION AND ESTABLISHMENT OF DITCHES.

Clerk to purchase blanks and books.—If the trustees of any township have occasion to exercise the power conferred upon them to establish ditches, drains, and water-courses, they should authorize the clerk to purchase a sufficient number of printed blanks for all petitions, notices, certificates, statements, and bonds, which are necessary for the purposes of the law, and one ditch-journal, to be paid for out of the township funds. But the foregoing provisions are not to be construed to prevent the use of written petitions, bonds, or other instruments or papers necessary to be used under the ditch laws.[1] 4513.

Clerk to fill out blanks.—At the request of any person or persons, who may desire to file a petition and bond for the location and establishment of a ditch, drain, or water-course, as hereinafter provided, it is the duty of the clerk to fill out a blank petition and bond for the person or persons making the request.[1] 4513.

[1] In Reeves *v.* Treasurer of Wood County, 8 Ohio St. 333, the court held the act of May 1, 1854, authorizing the establishment of ditches, etc., and the amendatory act of April 14, 1857, unconstitutional, inasmuch as they authorized an appropriation of private property without reference to the public welfare. But the act of March 24, 1859, to provide for locating ditches, etc., here called in question, steers clear of that objection; and, as now advised, we can see no ground on which it can be well claimed to conflict with the constitution. Brinkerhoff, J., in Thompson *v.* Treasurer of Wood County, 11 Ohio St. 678.

The construction of drains by townships, in cases where the public health, convenience, or welfare demands it, is within the

Meaning of word "ditch," and application of these provisions.—It is provided that the word "ditch," when used in the chapter of the revised statutes relating to township ditches, shall include a drain or water-course, and that the petition for any such improvement shall be held to include any side, lateral, spur, or branch ditch, drain, or water-course, necessary to be constructed to secure the object of the improvement, whether the same is mentioned in the petition or not; and that the provisions of the statutes relating to township ditches shall extend to and include the straightening of streams and water-courses. 4512.

Power to establish.—The trustees have the power, whenever in their opinion the same will be conducive to the public health, convenience or welfare, to cause any ditch to be established, located, and constructed, according to the following provisions, within the township,[1] and for that purpose, may cross a railroad, turnpike road, or do any other thing necessary or proper to promote said purpose. 4511.

Petition.—Before any steps are taken for that purpose, a petition from one or more persons owning lands adjacent to the line of the proposed ditch, drain, or water-course, must be filed with the clerk.[2] 4514.

What petition must contain.—Such petition must set forth the necessity of the ditch, drain, or water-course, with a substantial description of its proposed starting point, route, and terminus.[2] 4514.

No. 19. Form of Petition.

To the Board of Trustees of Township, County, Ohio:

Your petitioners, residents of said township, and owning lands adjacent to the route hereinafter described, respectfully represent that the public health, welfare, and convenience require the establishment and construction of

meaning of the "police purposes" mentioned in the constitution. Sessions *v.* Crunkilton, 20 Ohio St. 349.

[1] 78 Ohio Laws, 209.

[2] See note, p. 64.

a ditch along the following described route (*here describe the route, specifying the beginning, intermediate points, and terminus.*)

Your petitioners therefore request that such lawful proceedings may be had as are necessary to establish and construct such ditch along the route proposed.

(Date.) (Signed,) ——— ———
——— ———
——— ———

Bond.—With the petition, a bond, with at least two sufficient sureties, to the acceptance of the clerk, must be filed, conditioned to pay all expenses incurred, in case the trustees refuse to grant the prayer of the petition.[1] 4514.

No. 20. Form of Bond.

Know all men by these presents, that we (*here insert the names*), are held and firmly bound unto the trustees of township, in county, in the penal sum of hundred dollars, to the payment of which we do hereby, jointly and severally, bind ourselves, our heirs, executors, and administrators, if default be made in the condition following:

Whereas, the said (*here insert names of the petitioners*), and others, have filed their petition with the trustees of said township, praying for the establishment and construction of a ditch along the following route (*here describe the route as in the petition*). Now, if the said shall pay all expenses incurred by the township trustees and officers in reference to such ditch, in case the said trustees shall refuse to grant the prayer of the petition, then this obliga-

[1] The filing of a bond with the township clerk, and the giving notice to the owners of the land along the route of the proposed ditch, are not merely technical requirements, but conditions precedent to the jurisdiction of the trustees to hear and determine the petition. Sessions *v.* Crunkilton, 20 Ohio St. 349.

tion to be void; otherwise to be and remain in full force and effect.

Given under our hands, this day of , 18 .

____ _____

____ _____

____ _____

Executed in presence of

____ _____

____ _____

The clerk should indorse on the petition and bond the date of filing, and also upon the bond his approval and acceptance of the same. 4514.

Suit upon bond.—If any person or persons giving bond conditioned for the payment of all costs and expenses, fail or refuse to comply with the requirements of the bond, in case the trustees refuse to grant the prayer of the petition, the trustees may bring suit before any justice of the peace of the township, upon such bond, and collect all costs and expenses, with the costs of prosecution, and pay out the same in conformity with the estimates made in the case. It is provided that in such suit the ditch-journal containing the record of their proceedings, or a certified copy therefrom, shall be *prima facie* evidence of such indebtedness. 4516.

Time for hearing.—Upon the filing of the petition and bond, it is the duty of the clerk to give immediate notice of the pending of the petition to the trustees, and thereupon the trustees are required to designate a time and place when and where they will meet to hear the petition and complete their proceedings thereunder. An entry fixing the time and place for the hearing should be made in the ditch-journal. 4514.

No. 21. Form of Entry.

In the matter of the petition of and others, for the establishment of a ditch:

The trustees having been notified by the clerk of the township of the pendency of a petition by said and others, owners of lands adjacent to the line of the proposed ditch, and that a bond conditioned for the payment of expenses, according to law, has been filed with and accepted by the clerk, do therefore order and determine that they will meet at , in , on the day of , 18 , at o'clock in the forenoon (*or*, afternoon), to hear said petition and complete their proceedings thereunder.

Notice to land-owners.—It is the duty of the clerk to prepare the necessary notices and deliver them to the petitioner or petitioners, to be by them served upon the respective owners. The notice must state the filing and pendency of the petition and the substance of the prayer thereof, and the time and place when and where the same will be for hearing by the trustees. Each owner of any interest in lands sought to be affected must be served with a copy of the notice.[1] 4515.

No. 22. Form of Notice to Owner.

To — —:

You are hereby notified that the undersigned and others have filed a petition and given bond to the clerk of township, for the establishment of a ditch along the following described route (*here describe the route as in the petition*), and that the same is now pending before the trustees of said township, and will be heard, and their proceedings thereunder completed on the day of , 18 , at o'clock in the forenoon (*or*, afternoon), at , in .

[1] The giving of notice to the owners of the land along the route of the proposed ditch is not merely a technical requirement, but a condition precedent to the jurisdiction of the trustees to hear and determine the petition. Sessions *v.* Crunkilton, 20 Ohio St 319.

Given at , this day of , 18 .

____ _____ ____ _____

____ _____ ____ _____

Clerk of Township. *Petitioners.*

Proof of service.—A copy of the notice should be returned to the township clerk by each petitioner making service thereof, with his affidavit indorsed thereon, setting forth the names of the persons served, and the time and manner of service. And the clerk should copy the notice and affidavit into the ditch-journal as a part of the record.

No. 23. Form of Affidavit of Service.

The State of Ohio, County, Township, ss:

, being first duly sworn, says that on the day of , 18 , he served and each with a true copy of the within notice, personally, and that on the day of , 18 , he served and each with a true copy hereof in the same manner.

(Signed,) ____ _____

Sworn to before me, and subscribed in my presence, this day of , 18 .

____ _____

Clerk of Township.

Notice to non-residents.—If any person owning lands sought to be affected by the proceedings be a non-resident of the county, it is the duty of the clerk to forward him a copy of the notice by mail, if his place of residence be known to the clerk; but if unknown, the notice must be given by publication, for two consecutive weeks, in some newspaper published, or of general circulation, in the county.[1] The clerk should make affidavit setting forth the

[1] Where a legislative act simply provides, in general terms, for notice by publication of the pendency of proceedings under it, to non-resident land-owners who are to be affected by the pro-

sending of notices by mail when service is made in that manner. 4515.

Form and record of notice.—With slight alteration the foregoing form of notice will suffice as the form of the advertisement. A copy of such advertisement cut from the newspaper, together with the affidavit of the publisher showing that it had appeared more than two consecutive weeks, should be filed with the clerk and made a part of the record.

Death of owner not to abate.—The death of any party in interest will not work an abatement of the proceedings; but the trustees, upon being notified of such death, must order a notice similar to the foregoing to be given to the successors in interest to the deceased—such notice to be served and returned in the usual manner. 4517.

Application for compensation.—Any person claiming compensation for lands so appropriated to construct any ditch, drain, or water-course, must make an application, in writing, for the same, to the clerk, on or before the day set for the hearing of the petition, and the clerk must lay the application before the trustees. 4518.

No. 24. Form of Application for Compensation.

To the Trustees of Township:

The undersigned respectfully represents that if the ditch, as prayed for in the petition of and others, be established and constructed, it will pass through and occupy lands belonging to him as follows: (*here describe the route through applicant's lands,*) and that the portion of my lands so occupied will be about yards long and feet wide, and that the same is worth in cash at least dollars; and such a ditch will further damage me in the

ceeding, it is sufficient if the published notice be addressed to "the non-resident owners of the following lands, to wit:"—describing the lands. Miller *v.* Graham, 17 Ohio St. 1.

sum of dollars, the payment of all which I request shall be made to me before the opening of the ditch.

(Date.) ——— ———.

Application when location is changed.—In case the location of the ditch be changed by the trustees to such an extent that it will affect other lands than those which would have been affected if the route set forth in the petition had been followed, the application for compensation may be filed at any time before the order of the trustees establishing the ditch is entered upon the township record. In either case, the owner will be held to have waived his claim to compensation if he fail to make such application within the time limited.[1] 4518.

Adjournment.—If it appears to the trustees, on the day set for the hearing, that any person in interest has not received the required notice, or that any of the preliminary steps required have not been taken, they must adjourn to a time not exceeding twenty days, and order such notice to be given or such preliminary steps to be taken. 4519.

Majority a quorum.—It is provided that a majority of the trustees shall be competent to perform any of the requirements of the statutes to provide for locating township ditches. 4519.

Hearing.—If they find, upon meeting, that the bond has been filed, notice given, and all requisite steps have been taken, the trustees will proceed to hear and determine the petition. 4520.

View.—The trustees are required to view the premises along the proposed route. They may call to their assistance an engineer to locate, level, and measure the course of the proposed ditch, and such other assistance as may

[1] A land-owner failing to make application for compensation or damages within the time limited by the act, will be held to have waived his right to the same; and the provision in the act relating to ditches, drains, and water-courses to that effect is not in conflict with section 19, article 1, of the state constitution Cupp *v.* Seneca Co., 19 Ohio St. 173.

be necessary, and may adjourn from time to time to determine their proceedings. 4520.

Establishment of ditch.—If they find such ditch, drain, or water-course necessary, and that the same will be conducive to, the public health, convenience, or welfare, the trustees may proceed to locate and establish the same in substantial conformity with the route described in the petition, or as near the route so described as in their opinion will best answer the purpose. And when their finding is in favor of the ditch and their report filed with the clerk they must fix a day, within ten days, for the hearing and determination of complaints by any person affected. 4520.[1]

Compensation to land-owners.—At the time fixed, it is the duty of the trustees to examine into and determine all applications made to them for compensation, and to specify the several amounts, by whom, and to whom to be paid, and the time of payment, and no order for the opening or sale of any ditch, or any part thereof, can be made until the full amount of compensation for land appropriated shall have been paid. The trustees are further required to pay the compensation out of the general township fund and apportion the amount equitably upon the lands benefited, and certify the apportionment to the county auditor within forty days from the time of payment, to be placed upon the duplicate and collected as taxes are collected, and when collected to be paid into the general fund to reimburse the same. Any land owner may pay the amount assessed against his lands to the township treasurer at any time before the assessment is certified to the county auditor. 4521.[2]

More than one channel may be established.—If it becomes necessary, by reason of islands or otherwise, to construct more than one channel or branch for the flow or discharge of water, in order to accomplish the ends and purposes for which a ditch may be established and constructed, the same may be done in one proceeding and under one petition, and the trustees are authorized to make all necessary and proper orders to effectually accomplish the same. 4522.

Riprapping or other protection may be ordered.—If it be found necessary to protect any ditch constructed by the township from being washed out by high water or otherwise, that any portion

[1]As amended, 81 Laws, 81. [2]As amended, 81 Laws, 39.

of the same shall be riprapped or otherwise protected by stone or timber, the trustees in their final order may direct such additional work to be done, particularly describing its kind and character, and the particular places, and the sections on which the same shall be done and by whom. 4523.

At the hearing of the petition, if any person interested in the construction and location of the ditch makes a written request to the trustees to box or tile and cover with earth the whole or any portion of such ditch which may pass through his land, they are required, if they deem it practicable and equally beneficial, to grant the request, and to prescribe the size of boxes or tile to be used and the depth they shall be placed underground. Upon such request the trustees may require the whole or any part of the ditch to be boxed or tiled, and in all cases the expense must be apportioned according to benefits derived as hereinafter set forth. 4524.[1]

Change of route.—At the time of hearing the petition, if any person or persons interested in the location of the ditch make a written request for a change of route of the same, for his, her, or their own special interest and convenience, the trustees may so change the route, provided a good and sufficient ditch, drain, or water-course can be had. In case such change causes an increase of the work necessary to open the ditch, the whole amount of such increase must be apportioned to the person or persons making the request, in addition to his, her, or their proper share of the remainder of the ditch. 4525.

Ditch to be divided into sections.—It is the duty of the trustees, in locating a ditch, drain, or water-course, to divide it into suitable sections, not less in number than the number of owners of land through which the same may be located, and to apportion the sections equitably to the parties benefited, according to the benefits derived therefrom; and to prescribe the time within which the work shall be completed, and by whom the same shall be done, and order that each working section beginning at the mouth of the ditch shall be completed at least two days earlier than the one next above. 4526.

Date of decision.—The day upon which the trustees conclude their proceedings upon the petition is to be deemed the date of their decision upon the same. 4526.

Fees for locating ditch.—The following fees are allowed by law for locating and establishing ditches, drains and water-courses: To the trustees, one dollar and fifty cents each per day; to the clerk for recording each individual proceeding of trustees, ten cents per hundred words; for apportioning cost of locating and recording the same, twenty-five cents; for each petition or bond, fifteen cents;

[1]As amended, 82 Laws, 212.

for each notice or statement, five cents; to chainmen, or axmen, one dollar per day each; to the engineer four dollars per day for locating, and three dollars for plat and profile. 4527.

Report of trustees' proceedings.—Within five days after their decision on the petition, the trustees must make a full and complete report of their proceedings had thereon, to the township clerk; and in their report they are required to designate the amount of costs made in locating the ditch, and to prescribe the time within which the costs shall be paid, together with the width, depth, and flare of the ditch. 4528.

No. 25. Form of Trustees' Report.

To , Clerk of Township:

In the matter of the petition of , and others, for the location and establishment of a ditch along the following route (*here describe the route, as in the petition*), the undersigned, trustees of township, report as follows: The said parties having duly filed their said petition, and given bond, with sufficient sureties, to the satisfaction of the township clerk, to pay all expenses incurred, in case the trustees refuse to grant the prayer of the petition, and the trustees, finding that due notice has been given to the owner or owners of all lands that may be affected by the said ditch, except , who has been notified by a copy of the notice, forwarded by mail to him at his place of residence, by the clerk of the township (*or, if such be the case, say* "who has been notified by a notice published in the , a newspaper of general circulation in this county, his place of residence being unknown"); and after a full hearing, examination, and inquiry, and a view of the premises along the proposed route, with the assistance of , a civil engineer, two chainmen, and an axman, it being found that a ditch upon the route, substantially as described in the petition,* is necessary, and will be conducive to, the public health, convenience, and welfare,

do therefore order that a ditch be located and established through and upon the said route, the same being more fully and minutely described as follows: (*Here insert the description, with courses and distances, as surveyed by the engineer.*) (*In case it has been determined to make any change in the route, insert the following at the* *: "except that upon the lands of , who has filed a written request for that purpose, it is deemed best to vary from the proposed route, so as to follow the route hereinafter described.") And the trustees, having examined into all the claims for compensation filed by the owners of property to be affected by the proposed ditch, do further find and determine that the following persons are entitled to the amounts set opposite their respective names:

To , the sum of dollars.
To , the sum of dollars.

And the trustees further order, that said sums of money be paid to the township treasurer, to be by him distributed to the said parties, within days from the date of this report, in sums, and by the parties named, as follows:

By , the sum of dollars.
By , the sum of dollars.

The trustees have further found, and do hereby order, that the said ditch be divided into sections, and that the same be apportioned to the parties benefited, as follows—the same being, in the opinion of the trustees, equitable, according to the benefits to be derived from the ditch:

Section 1, beginning at , and running thence feet over the lands of , to , to be done and completed by .

Section 2, beginning at , and running thence feet, over the lands of , to , to be done and completed by .

The trustees further order, that the said ditch shall be of the width of , and a depth of , at ; and from thence decreasing in width at the rate of , and in depth at the rate of , to , where the

width shall be , and the depth , as more fully shown by the plat and profile of the engineer filed herewith. That the work upon said ditch shall be completed within months from the date of this report, and that the costs of location shall be paid within days from said date.

Costs of Location.

Due township trustees, each	2	days, at	$1.50—	$3.00=	$9	00
" 2 chainmen, "	2	" "	1.00	2.00	4	00
" 1 axman,	1	" "	1.00		1	00
" engineer,	2	" "	4.00		8	00
" same for plat and profile					3	00
" clerk, filing petition and bond 30c., 5 notices 25c..						55
" same, recording proceedings, 500 words, at 10c....						50
" same, apportioning cost						25
Total					$26	30

Given at , this day of , 18 .

Trustees of Township.

Record of report.—The report must be recorded by the clerk in the ditch-journal of the township. 4529.

Apportionment of costs.—The clerk is required to apportion the payment of the costs of location to the parties interested in the ditch, in the same manner as provided for the apportionment of the labor of construction. 4529.

Statement to be prepared by the clerk.—It is the duty of the clerk to prepare for each person having costs to pay or labor to perform on a ditch, a brief statement in writing, or on a printed blank, describing his, her, or their apportionment of the ditch, drain, or water-course, together with the length, depth, width, and flare of the same; the

amount of costs assessed against such person, when to be paid, and by what time the work is to be completed. 4529.

No. 26. Form of Statement.

To :

You are hereby informed, as the law requires, that there has been assigned to you to construct and complete the following portions of the ditch located and established upon the petition of , and others, viz.:

Section 1, beginning at , and to be made feet wide and feet deep at that point , running thence with a flare of , to , a distance of .

Section 2, etc.

For further particulars concerning the construction of said ditch, you will consult the report, plat, and profiles of the engineer on file in this office. You are required to complete the sections so apportioned to you on or before the day of , 18 . Of the costs of locating said ditch, there has been apportioned to you the sum of dollars, which you are required to pay within days from date hereof.

Given at , this day of , 18 .

Clerk of Township.

Extension of time.—The trustees, if they deem it right and proper, may, at the expiration of the time fixed for the completion of the work, extend the time for the completion thereof, to a time not more than four months from the time previously specified; and the clerk is required to make an entry of such extension in the ditch-journal. 4530.

No. 27. Form of Entry of Extension.

In the matter of the ditch ordered to be established upon the petition of and others:

The trustees, being satisfied that it is necessary and

proper, order that the time for the completion of the said ditch be extended to the day of , 18 .

Inspection of work, bond, etc.—If no appeal be taken from their proceedings, it is the duty of the trustees, upon the expiration of the time specified by them for the opening of the ditch, drain, or water-course, to proceed immediately to inspect the same. If any section or part of section has not been completed, the trustees may accept a bond, with sufficient security, from the person or persons having the unfinished work to perform, conditioned for the faithful completion of such work within such time as the trustees may specify in the bond.[1] 4543.

No. 28. FORM OF BOND TO SECURE COMPLETION OF WORK.

Know all men by these presents, that we, , are held and firmly bound unto the trustees of township, and their successors in office, in the penal sum of dollars, to the payment of which we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of the foregoing obligation is such, that, whereas, the said has been ordered by said trustees to complete sections and of the ditch petitioned for by and others, and which sections are yet incomplete. Now, if the said shall duly finish and com-

[1] Where, under the act authorizing the location of ditches (52 Ohio L. 96), the township trustees on refusal of the owner of land to construct the portion on his land which had been assigned him, let out the work to plaintiff, agreeing to give him the certificate therefor, the plaintiff, on failure to recover on the certificate, from the owner of the land, by reason of the unconstitutionality of the act, can not hold the township trustees personally responsible. Both parties are held to a knowledge of the law, and both are equally in fault—plaintiff as trespasser, and defendants as attempting to execute a void statute. Mc Carty *v* Bralton, 1 W. L. M. 397.

plete said sections on or before the day of , 18 ; then the above obligation shall be void; otherwise to remain in full force and virtue.

Signed by us, this day of , 18 .

Approved:

Trustees of Township.

Sale of unfinished work.—If any person or persons, having unfinished work at the time of the inspection by the trustees, shall fail or refuse to give bond for the completion thereof, then it is the duty of the trustees to proceed at once to sell the unfinished work to the lowest bidder.[1] 4543.

Estimate of cost.—Before the unfinished work can be sold, the trustees must make a fair and impartial estimate of the cost of the same, and cause it to be entered upon the ditch-journal; and the work can not be lawfully sold for any sum exceeding the estimate. It is also provided that the fees and allowances in all such proceedings, and the apportioning and assessing of such costs and expenses shall be the same as in the original location and establishment of the ditch, to be paid by the person whose section of such ditch is sold, and if necessary to be included in and collected by assessment. 4544.

No. 29. Form of Estimate.

In the matter of the ditch ordered to be established upon the petition of and others:

The trustees finding that sections and of said ditch, apportioned to , are unfinished, and the said

[1] See note, page 78.

refusing to give bond to secure the completion thereof, the trustees hereby estimate the cost of the completion of said sections as follows: Section , at dollars; section , at dollars; and the clerk is hereby directed to cause notices of the sale of said work to be prepared and posted up according to law.[1]

Notice of sale.—Notice of the sale must be given by setting up written or printed notices, in at least three of the most public places in the township, at least ten days before the day of sale, specifying the time and place of the sale, and the time when the work must be completed. The trustees are required to take a bond, or such other security for the completion of the work as to them may seem proper.[2] 4543.

No. 30. Form of Notice of Sale.

Notice is hereby given that the work on sections and of the ditch, established by the township trustees, will be sold to the lowest bidder, at the in , on the day of , 18 , at o'clock forenoon (*or*, afternoon). Said work is required to be completed on or before the day of , 18 ; and the successful bidder will be required to give bond, to the satisfaction of the

[1] See note, page 78.

[2] 71 Ohio L. 132.

The power of the trustees to levy assessments under the act of May 1, 1862, relating to ditches, etc., is derived from the legislature, under the general grant of legislative power to the general assembly, under section 7, of article 10, of the constitution, which declares that commissioners of counties and trustees of townships, and similar boards, shall have such power of local taxation for police purposes as may be prescribed by law. Sessions *v.* Crunkilton, 20 Ohio St. 349.

The power to assess the costs and expenses of constructing the ditch upon the lands benefited, is dependent upon the jurisdiction of the trustees to locate and establish the ditch; and if bond has not been filed, or notice has not been given to the land-owners, the proceedings will be held void. Ibid.

trustees, to secure the completion of the same. Profiles and estimates may be seen at the office of the township clerk. The work will not be sold at more than the estimate.

(Date.)

——— ———
——— ———
——— ———

Clerk of *Township.* *Trustees of* *Township*

No. 31. FORM OF BOND FOR WORK SOLD.

Proceed as in Form No. 28 to the condition, and then insert the following instead of the condition in that bond:

"The condition of the above obligation is such, that, whereas, the said did, on the day of , 18 , purchase at public sale, and agree to furnish the materials and perform the work necessary to complete the and sections of the ditch established upon the petition of and others, on or before the day of , 18 , for a compensation of . Now, if the said shall well and faithfully perform his said agreement, then this obligation shall be void; otherwise, to remain in full force and virtue."

Conclude the bond as in No. 28.

Liability on bond.—If the party to whom the work was apportioned, or the purchaser of the unfinished work gives a bond to secure the completion of the same, and fails to comply with the conditions thereof, within ten days after the time specified in the bond for the completion of the work, it is the duty of the trustees immediately to compel him or them, by suit or otherwise, to pay all costs and expenses incurred, and all damages and costs accruing in consequence of such failure; and the journal containing the record of their proceedings, or a certified copy therefrom, will be *prima facie* evidence of the indebtedness. Any person injured by the non-performance of the work may also bring suit before a justice of the peace of the township, and recover from the party in default such damages as he may

have sustained by reason thereof, together with the costs of the proceeding.[1] 4545, 4546.

Resale.—In case of the non-performance of the work by the party to whom it is sold, the trustees may cause it to be resold, in the same manner as provided by law for the original sale as often as may be necessary to secure its completion, but the same work can not be sold more than once to the same person, and they may bring suit against the parties in default upon their bonds for the completion of the work.[1] 4545.

Assessment certificate.—As soon as the work is completed according to the terms of the sale, and to the satisfaction of the trustees, they are required to certify to the auditor of the county the amount each section sold for, adding a proportionate amount of the costs and expenses of the sale, together with a correct description of each piece of land upon which the same is assessed. The auditor must place the amounts on the tax duplicate against the lands, to be collected as other state and county taxes.[1] 4547.

No. 32. Form of Certificate to Auditor.

To the Auditor of County, Ohio:

This is to certify that the undersigned, trustees of township, in said county, having duly established, upon the petition of and others, a certain ditch in said township, described as follows: (*here insert description of the line of the ditch, naming termini*) found that certain sections of the same had not been completed at the time specified in the order therefor. They therefore caused said sections to be sold to the lowest bidder, and completed according to law; and there is now due upon said sections, and the lands abutting thereon, the sums specified as follows, which you are requested to place upon the tax duplicate for collection from the lands described:

[1] See note 2, page 80.

Section 1, running through a tract of acres of land belonging to , the same being in township 3, fractional range 2 of the purchase, sold for dollars, and assessed for dollars of costs and expenses. Total .

Section 2, etc. (*describe as before.*)

Given at , this day of , 18 .

____ _____

____ _____

____ _____

Township Trustees.

If sufficient descriptions of the lands can not be conveniently obtained, they may usually be found in the tax duplicates in the auditor's office.

Certificate for pay.—At the same time that they certify the amounts for taxation, it is the duty of the trustees to certify the amount due to each person for work performed on the ditch, to the auditor of the county, who is required to draw his warrants for the payment of such amounts out of the county treasury.[1] 4517.

No. 33. FORM OF CERTIFICATE FOR PAY.

To the Auditor of County, Ohio:

This is to certify that there is due to , for work performed upon section of the ditch, pursuant to the sale thereof, had by order of the undersigned, trus-

[1] The act of May 1, 1862, entitled "an act to provide for locating, establishing, and constructing ditches, drains, and water-courses in townships," is not repugnant to the constitution of the state, in so far as its provisions relate to the taking of private property for township ditches, when the public health, convenience, or welfare demand it; nor in so far as its provisions relate to the mode of compensating the owner for property taken for public use; nor in so far as its provisions relate to the assessment of the costs and expenses of constructing the ditch upon lands benefited thereby. Sessions *v.* Crunkilton, 20 Ohio St. 349.

tees of township, in said county, the sum of dollars, for which you are hereby requested to draw an order on the county treasury, according to law.

(Date) ——— ———.

——— ———

——— ———

Township Trustees.

Parties may pay to trustees.—Any person interested may pay the amount of the purchase-money, and share of costs and expenses due from him, to the trustees, at any time before the same are charged upon the duplicate, to be paid by the trustees to the purchaser or purchasers. 4547.

Delinquent costs collected as taxes.—If any person or persons fail or refuse to pay his, her, or their apportionment of the costs of location, or of the cleaning out, deepening, widening, or repairing of such ditch, drain, or water-course, by the time fixed by the trustees for the payment thereof, it is the duty of the trustees to certify the same to the auditor of the county, giving a correct description of each piece of land upon which such costs are assessed. See Form No. 32. The auditor, upon receipt of such certificate, must place the same on the tax duplicate, to be collected as other state and county taxes. When collected, it is the duty of the county treasurer to pay over the amount to the township treasurer, as other township funds, specifying the purpose thereof; and the trustees must pay out the same in conformity with the record on the ditch-journal. 4549.

Whoever sustains damage by the failure of the trustees to perform any duty imposed upon them by the statutes relating to ditches may recover the same by action against them before a justice of the peace. 4550.

SECTION 2. APPEALS.

Notice of appeal, and bond.—Any person or persons interested in the location of a ditch, drain, or water-course,

or in the amount of compensation determined upon by the trustees, may appeal from the proceedings of the trustees to the probate court of the county, by giving written notice thereof to the clerk of the township, within eight days after the decision of the trustees, and by filing with such clerk a bond, with two or more sufficient sureties, conditioned for the payment of all costs made upon such appeal, in case the decision of the trustees is sustained in the probate court. 4533.

No. 34. Form of Notice of Appeal.

To , *Clerk of* *Township of* *County*:

You are hereby notified that the undersigned, who are interested in the location of the ditch petitioned for by and others, and in the amount of compensation determined upon by the township trustees, will appeal from the decision of the said trustees in that behalf, to the probate court of said county.

(Date,)

_____

_____

_____

No. 35. Form of Bond for Appeal.

Know all men by these presents, that we, , are held and firmly bound unto the trustees of township, in the county of , in the sum of dollars, for the payment of which we do hereby jointly and severally bind ourselves, our heirs, executors, and administrators, if default be made in the condition following:

Whereas, the said have taken an appeal to the probate court of the county of , from the final decision of the trustees of township of said county, as to the location of the ditch prayed for by and others, and as to the amount of compensation to be paid for lands appropriated for the purpose of opening the said ditch. Now, if the said shall pay all costs made upon such

appeal, in case the decision of said trustees shall be sustained in said probate court, then this obligation shall be void; otherwise to be and remain in full force and effect.

Signed by us, this day of , 18 .

____ _____

____ _____

____ _____

Approval of bond.—The foregoing bond must be approved by the clerk of the township and the probate judge, and, with the approvals indorsed thereon, is to be filed by the latter with the other papers in the case. 4533.

Transcript.—When the notice has been given and the bond duly executed, approved, and filed in the probate court, the township clerk, at the request of each person so appealing, his agent or attorney, is required to make out and deliver to such person a full and complete certified transcript of the proceedings had in the case, which transcript the appellant must file in the probate court within ten days after the filing of his bond. 4533.

The transcript should contain complete copies, in chronological order, of all entries upon the township ditch records, and copies of all documents and proceedings with reference to the establishment of the ditch from the filing of the petition down to, and including, the notice of appeal; and should be certified to as follows:

No. 36. FORM OF CERTIFICATE TO TRANSCRIPT.

I, , clerk of township of county, do hereby certify that the foregoing is a full and complete transcript of the proceedings of the trustees of said township in reference to the ditch prayed for by the petition of and others.

Given under my official signature, this day of , 18 .

____ _____,

Clerk of Township

Stay of proceedings by appeal.—As soon as an appeal from the decision of the trustees is perfected, all further proceedings before them cease and are stayed. 4543.

Preliminary questions.—At the time fixed for that purpose, the probate judge must first hear and determine the preliminary questions in the case. If he find that the proceedings in appeal have not been perfected according to law, it is the duty of such judge to dismiss the appeal and certify the dismissal back to the trustees, who thereupon proceed as if no appeal had been taken; but the said probate judge may, in his discretion, allow the correction of any technical defect, error, or omission in making the appeal. 4536.

When costs are to be paid by appellant.—If the report of the jury be not in favor of the appellant, all costs must be taxed to and paid by him, and collected as judgments at law in other cases. If two or more persons appeal, and the report is favorable to some and against others of them, the costs must be apportioned equitably among those reported against. 4541.

Proceedings after decision in probate court.—It is required that the probate judge shall make a transcript of all the proceedings had before him in the case, and transmit the same, together with all files and papers in the case, to the clerk of the township, who is required to notify the trustees to meet at his office, at a time to be fixed by him, within five days from the date of the notice, to determine matters growing out of the appeal and verdict, and to secure the construction of the ditch in the manner provided where no appeal is taken.[1] 4542.

[1] Under the act of May 1, 1854, "authorizing the trustees of townships to establish water-courses and locate ditches in certain cases," the commission of review appointed upon appeal to the probate court, may report against the location of the proposed ditch in toto. Such report, if full, pertinent, and not impeached for fraud, is final in the case, and the probate judge has no au-

Where the records, proceedings, or papers pertaining to any ditch, under the provisions of the statutes relating to ditches, have in any way been lost or destroyed, the trustees may re-establish the ditch on the original route, and determine the depth, width, and flare, and divide the same into suitable sections, and apportion the same as provided in other cases, and make a full record of such proceedings, and the record so made is to be deemed conclusive evidence of the original capacity and apportionment of said ditch. 4551.

SECTION 3. REPAIRING AND CLEANING DITCHES.

How ditch altered or repaired.—The trustees have the power to cause any ditch located and constructed by them, under the provisions of any law relating to ditches, to be altered, deepened, widened, enlarged, repaired, boxed, or tiled, and the proceedings are to be the same, and the expenses apportioned in the same manner as provided for original construction.[1] In case the trustees refuse to act the county commissioners may, on application of one or more freeholders actually benefited, cause the work to be done, and apportion the expense. 4510, as amended, 81 L. 28. 4552.

Proceedings for repair.—For the purpose of keeping open any ditch established by the township trustees, any resident owner of land assessed for its construction may make his or her statement, in writing, to the trustees of the township, setting forth the necessity of cleaning out the ditch. 4553.[2]

No. 37. FORM OF STATEMENT.

To the Board of Trustees of Township, County, Ohio:

The undersigned, owner of lands assessed for the construction of the ditch, heretofore established pursuant to law, respectfully represents that the same is, at and near , in such a condition, by reason of the obstruc-

thority, under the statute, to set the same aside, supersede the commission, and appoint a second commission of review. Coen v. White, 8 Ohio St. 228.

[1] 78 Ohio Laws, 210; 80 Id. 15. [2] 81 Laws, 166, and 86 Id. 256.

tions therein, as to require cleaning out, which you are hereby respectfully requested to have done according to law.

(Date.) —— ——

Proceedings upon receipt of notice.—Upon receipt of such notice, it is the duty of the trustees to meet and appoint one of their number to examine the ditch. 4553.

Duties of examiner.—The trustee so appointed is required to go upon the line of the ditch and make such examination, and estimate the amount of labor and money required therefor, and fix the portion thereof that the owner or owners of each lot or tract of land and each corporation assessed for the construction of said ditch should be assessed for such cleaning out. The assessment is required to be made according to the benefits to accrue to each, as nearly as practicable, unless the necessity for such cleaning out arose from the act or neglect of any land-owner or corporation; in which case such neglect is to be considered, and the assessment of such owner or corporation proportionately increased. 4553.[1]

Return of estimate.—Such trustee is required to return his estimate and assessment, with such facts as may be necessary to a full understanding of the case, to the trustees, in writing, within ten days from the date of his appointment, and fix a time for hearing the claims of those interested. 4554.[1]

No. 38. Form of Estimate and Assessment.

To the Trustees of Township, County:

The undersigned trustee of said township, heretofore appointed by you to examine the ditch, and report the amount of money and labor necessary to clear out said ditch and assess the same upon the parties to be benefited thereby, respectfully reports that after being sworn according to law, he went upon and made a complete and

[1] As amended, 81 Laws, 166, and 86 Laws, 256. See amendment to form on p. 90.

careful examination of said ditch, and finds that the same is seriously obstructed at and near the lands of and of . That the said obstructions on the lands of were caused by his own negligence in throwing or permitting to be thrown into said ditch a large quantity of brush and other rubbish from his lands; that it will require an expenditure of $ and days' labor to remove said obstructions and clear out said ditch at that point, and I have and do hereby assess the whole of said cost and labor upon said , by reason of his negligence aforesaid. The obstruction on the lands of was caused by an overflow and a breach in the ditch at that point, for which said was in no way responsible, and it will cost $ and require days' labor to repair and clean out the same, which expense and labor I hereby assess upon the parties assessed for the construction of said ditch as follows, viz.:

Upon days' labor and $ . .

Upon days' labor and $.

Upon days' labor for man, team, and wagon, but no money—each of said parties to furnish his own implements—I have made said assessment according to the benefits to accrue to each land-owner interested as near a practicable, and respectfully submit the same.

At , this day of , 18 .

I hereby fix the day of , 18 , at o'clock M., as the time of hearing the claims of those interested.

Due me for two days' services, $3.00.

Proceedings when report is returned.—Upon receipt of the report, it is the duty of the clerk to cause the same to be entered in full upon record, to make an entry of the time fixed for hearing the claims of those interested, and forthwith to notify the land-owners or agents, so far as their residence may be known, to the clerk. The notice must contain a written or printed copy of the report and estimate. 4554.[1]

[1] As amended, 81 Laws, 166, and 86 Id. 256.

No. 39. Form of Notice.

To , *day of* , 18 .

You are hereby notified that , a trustee of this township, was on the day of duly appointed by the trustees of said township to examine and report concerning the ditch, and as to the cleaning out of the same. That said did on the day of , 18 , return his report, estimate, and assessment to the trustees of said township, a copy of which is as follows: (*Here insert copy of report, estimate, and assessment.*)

Said trustees will meet at , on the day of , 18 , at o'clock A. M. (*or*, P. M.), to hear the claims of those interested.

—— ——,

Clerk of Township.

Proceedings at time of hearing.—At the time fixed for hearing the parties interested, the trustees may make such changes as to the proposed cleaning out as they may deem just and equitable. After the hearing, if they are of opinion that there is no necessity for cleaning out the ditch, they may dismiss the application and assess the costs on the applicant, but if they find it necessary, they are required to make a final order, to be entered upon record, specifying the cleaning to be done, how much by each, and the assessment upon each tract or parcel of land interested in the proposed improvement, and the extent to which the ditch shall be cleaned out. 4554.[1]

Form No. 40. Final Order.

The trustees having heard the claims of the parties interested in the proposed clearing out of the ditch, under the report of , heretofore made and recorded, find that it is necessary to clear out said ditch to its original width and depth on the lands of and , as therein set forth, and hereby order that the same be done within thirty days

[1] As amended, 81 Laws, 166.

from the date of this order. They further find that said was not wholly responsible for the obstruction of said ditch on his lands, and hereby order that his said lands be assessed only for one-half the estimated labor and expense thereof mentioned in said report, the amount of his said assessment to be days' labor, and $, and that the remaining tracts of land interested in such improvement be assessed as follows, viz:

Upon the lands of , days' labor and $.
Upon the lands , days' labor and $.

And that the clerk of this township forthwith notify all said parties of the contents of this order.

Notice of order to clean out ditch. It is the duty of the clerk to forthwith give the notice above provided for to the owners of the land, or their agents, to clean out the ditch as ordered within thirty days, but in case the residence of any owner is unknown to him, it is his duty to cause written or printed copies of the notice to be posted up in at least three of the most public places in the township. 4554.[1]

No. 41. Form of Notice.

To

You are hereby notified that, at the hearing of the report of , appointed to examine the ditch, had on the day of , 18 , the trustees of this township made the following final order as to cleaning out said ditch: (*Here insert copy of the final order.*)

You will therefore proceed to clean out said ditch to its original capacity within thirty days from the date of said order, and to comply with the other requirements thereof.

——— ———,

Clerk of Township, County.

[1] As amended, 81 Laws, 166, and 86 Laws, 256.

Proceedings after the order to clean out.—The trustees may, for good cause shown, extend the time of any or all the owners, for the completion of the cleaning out beyond the thirty days. Immediately after the expiration of the thirty days or such other time as may have been granted, it is the duty of the trustees to appoint one of their number to examine the ditch and determine whether it has been cleaned out and repaired as directed in the notice; and if the ditch has been repaired and cleaned out as directed, the parties will be discharged from further obligation other than the payment of their portion of the costs and expenses under the application; but if, on examination, any of the parties notified shall not have cleaned out and repaired the ditch as notified, the trustees are required to proceed at once to sell the cleaning out and repairing to the lowest bidder, in the manner provided for selling unfinished sections of ditches.[1] 4554, 4556.[1]

Assessment for cleaning out.—After completion of the work sold, the cost of the same may be collected by assessment in the same manner as the cost of original construction. 4556.[1]

Widening and deepening township ditches.—The township trustees have the same power to cause any ditch, heretofore or hereafter constructed by them, under the statutes for that purpose, to be widened, deepened, enlarged, or repaired, so as to enlarge the capacity thereof, as they have to order any ditch to be located and constructed; and the same proceedings, as far as necessary or applicable, are to be had in both cases. In all cases the expenses are to be apportioned in the same manner as the cost of original construction. 4552.

Removal of stakes or obstructions. — If any land-owner causes or permits stakes to be driven in the channel of the ditch, or in any other manner permits its obstruction at any fence-crossing or other part of the same, it is the duty

[1] See ante, this chapter, p. 87. As amended, 86 Laws, 256.

of the trustees to give him ten days' notice, in writing, to remove such stakes and obstructions. 4532.

No. 42. Form of Notice to Remove Stakes.

Office Trustees of Township, 18 .

To :

You are hereby notified to remove the stakes and obstructions placed or permitted by you in the ditch, at or near where your fence crosses the same, within ten days from the date hereof, or steps will be taken to have the same removed at your expense.

____ _____
____ _____
____ _____

Trustees of Township

____ _____

Clerk of Township.

Sale of work.—If the owner fail to remove the stakes or obstructions within the ten days, it is the duty of the trustees to proceed to sell out the work of removing the same to the lowest responsible bidder, after giving ten days' notice of the time and place of the sale and the time within which the work is to be completed, by posting up written or printed handbills in three or more of the most public places in the township. 4532.

No 43. Form of Notice of Sale.

Notice is hereby given that the work of removing the stakes and obstructions in the ditch, upon the lands of , will be sold to the lowest responsible bidder at , in , on the day of , 18 , at o'clock A. M. (*or*, P. M.) The successful bidder will be required to give security for the performance of the work.

(Date.)

____ _____
____ _____
____ _____

Trustees of Township.

____ _____

Clerk of Township.

Assessment.—After the sale, the proceedings to collect the amount necessary to pay for the work are the same as in case of the original location of a ditch. (See ante, this chapter.) 4532.

Duty of land-owner to keep ditch open.—It is the duty of every person or corporation through whose land any ditch is constructed to keep the same open, free, and clear of all obstructions upon his premises, and in case of failure to do so is liable to pay all reasonable and necessary expenses of removing the obstructions. 4555.[1]

Proceedings upon complaint as to obstruction.—A person or corporation aggrieved by any such obstructions may make a sworn statement of the facts to the township trustees, who are required to forthwith appoint one of their number to examine the premises and inquire into the truth of the statement. Such person must proceed without delay to make the examination, and if he find the statement to be true shall immediately notify the owner of the land on which the obstruction exists to remove the same within a reasonable time, not exceeding twenty days. 4555.[1]

Proceedings upon failure of owner to remove obstructions.—If the owner so notified fail to remove the obstruction, the trustee appointed to make examination must at once cause the same to be removed at the expense of such owner, and certify such expense to the auditor, who is required to place the same, together with all fees and other expenses in the case, on the duplicate, as an assessment upon the lands of such person or corporation, the same to be a lien upon such lands, and collected as other taxes. 4555.[1]

Flood-gates and water-ways.—The trustees may, if they deem it necessary, make an order permitting or requiring any owner to erect and maintain flood-gates or water-ways at any point on the ditch where it is crossed by a fence, or at any other place, and may prescribe in their order the kind, length, and height of flood-gates or water-ways to be so erected. It is the duty of the owner to keep

[1]As amended, 81 Laws, 166.

the same in good repair after they have been erected as aforesaid. 4531.

When assessment can not be enjoined.—It is provided that the collection of taxes or assessments levied or assessed to pay for the location or construction of any ditch, drain, or water-course constructed by the trustees under the authority of the Revised Statutes, shall not be perpetually enjoined or declared absolutely void in consequence of any error committed by the engineer or surveyor, or by the township clerk or trustees, in the location or establishment thereof, nor by reason of an error or merely technical informality appearing in the petition or record of the proceedings, nor by reason of any want of notice of the establishment of the ditch, drain, or water-course.[1] 4559.

Duty of court in certain cases.—The court in which proceedings are brought to recover any tax or assessment, or to reverse or declare void the proceedings to locate or establish any ditch or to construct the same, or to enjoin the tax levied or assessed or ordered to be levied or assessed to pay for the location or construction of a ditch, is required to proceed in the same manner and to exercise the same authority as is prescribed by section 4491 of the Revised Statutes with reference to county ditches. 4560.[2]

When a ditch becomes a public water-course.—When a ditch has been established and constructed for the public health, convenience, or welfare, either by private agreement between two or more individuals, whose real property has been affected thereby, or by a board of township trustees, or county commissioners, and such ditch has been used for the purpose of drainage of private lands or public highways for seven years or more, without obstruction or interruption, the same is declared to be a public water-

[1] 78 Ohio Laws, 210

[2] As amended May 1, 1891, 88 Laws, 504.

In a proceeding by county commissioners, under the former act of March 24, 1859, to provide for locating ditches, etc., where

course notwithstanding errors, defects, or irregularities in the location, establishment, or construction of the same, and such public water-course is in all respects to be considered and treated as a natural water-course, and the public have and possess, in and to such public water-course, the same rights and privileges which pertain and relate to natural water-courses. 4500.

Township may be assessed for ditch benefiting road. When any ditch improvement made by the county commissioners under the statutes provided for that purpose is of benefit to a township road, so that the traveled track or road-bed will be improved by the ditch, the county commissioners are required to apportion to that township a proper share of the costs and expenses of the improvement. 4449.

there is a substantial misdescription of the proposed locality of the ditch in the published notice of the proceedings to non-resident land-owners, where the report of the surveyor is silent as to the "availability" and "necessity" for the proposed ditch, and "as to how adjoining lands are to be affected thereby;" and where the record of the proceedings shows no finding by the commissioners that the ditch is "necessary, and that the same is demanded by, or will be conducive to the public health, convenience, or welfare"—these are such defects and errors in the proceedings as are fatal to their validity. Miller *v.* Graham, 17 Ohio St. 1.

Where county commissioners, acting ostensibly under the provisions of the act of March 24, 1859, to "provide for locating, establishing, and constructing ditches, drains, and water-courses," have established and constructed a ditch, and, to pay for the same, have levied an assessment on the lands of persons benefited thereby: *Held*, that where a party on whose lands such ditch has been wholly or in part constructed, has stood by and failed to resort to any remedy, legal or equitable, until after the ditch was made, a court of equity will not interfere by injunction to prevent the collection of such assessments, even if it be assumed that the proceedings of the commissioners were wholly illegal and void. Kellogg *v.* Ely, 15 Ohio St. 64.

Vacation of ditch.—The county commissioners may declare any township ditch vacated, and its location and establishment to be held for naught, upon proper petition and bond being filed, and notice given as required in cases of the location of a ditch. 4499.

Township may be assessed for cleaning out ditch.—Any township assessed for the construction of a ditch by the county commissioners may be notified and required to clean out its portion of the same, and in case of failure may be assessed as other owners. 4497, 4498.

Tax levy to pay ditch apportionment.—The trustees of any township to which is apportioned by the county commissioners any portion of the expenses of the construction of any ditch improvement are required to make an annual levy on the grand duplicate of the township of a tax sufficient in their judgment to pay such apportionment, but not to exceed five-tenths of one mill on the dollar, and certify the same to the county auditor on or before the 15th day of May. 4502.

Trustees may petition county commissioners for ditch.—The trustees of any township may, on written application, signed by twelve or more resident land-owners of the township, if, in their opinion, the interest of the township demands it, cause a petition and bond for a ditch improvement to be filed with the county commissioners in the same manner as private owners, and the proceedings thereon are required to be the same throughout as if the petition were filed by private persons. 4493.

Power to construct levees.—The trustees of any township through which any stream or river subject to overflow passes, on application of any party, may enter upon any land in the township to view any proposed levee or embankment, for the purpose of protecting any land held by more than one person, and may cause such levee or embankment to be located and constructed whenever, in their opinion, the same is demanded by, or will be conducive to the public health, convenience, or welfare. 4614.

May condemn property for levee purposes.—For levee and embankment purposes, as mentioned above, the trustees are authorized to appropriate private property, and the proceedings must be under and according to the law relating to the appropriation of private property to the use of corporations, provided that before any steps are taken toward the construction of such levees all expenses and costs necessary to the location or construction of the same must be paid, or guaranteed, in writing, by the person or persons interested, or some of them. 4614.

UNDER DRAINS.

Outlet.—Whenever it becomes necessary to enter upon the lands of another to secure an outlet to an underground drain or ditch, the person so entering upon the lands of another is required to continue the underground drain to such a place for an outlet as shall not damage the lands by water emptying on the same.[1]

When owner may be required to pay.—Whenever such underground drain becomes a benefit to the owner of the lands through which it passes, he may be required to pay a reasonable share of the cost of the drain upon his premises, and may use the same for an outlet for such drains as he may see fit to make.[1]

When owners can not agree, trustees may act.—When the parties or owners of land to be thus drained fail to agree as to location of underground drain and the amount to be paid by each, the trustees of the township or townships must locate the under drain, specify the size and quality of the tile or other material to be used, the depth at which it is to be placed, and apportion the expense of construction among the parties interested.[1]

Trustees may proceed under ditch laws.—If the trustees deem it best, they may proceed under the existing ditch laws, above set forth in this chapter, to perform the duties as to under drains; and upon the failure or refusal or either party to pay

[1] Enacted April 23, 1891, 88 Laws, 350.

the amount of expense determined by the trustees, the other party may bring an action therefor, before any justice of the peace of the township, and pursue the same to judgment and execution. In the construction of such underground drain upon the lands of another, the person so entering to construct the same is liable for all damages to crops.[1]

Supervisor to keep ditches open to sufficient depth.—The ditches and water-courses upon public highways into which such underground drains empty must be kept open by the supervisor of such public highway, to a depth sufficient for the proper drainage of such highways.[2]

Ditches Emptying into Adjoining County.

Whenever the township trustees construct a ditch emptying its waters into an adjoining county, or into any ditch, drain, or water-course constructed therein, the commissioners of such county and the trustees may agree as to the amount to be paid by the trustees for the use and benefit of such outlet, the funds to be paid by the trustees to be assessed by them upon the lands benefited, and collected in the manner prescribed by law for collecting assessments for constructing township ditches.[3]

Proceedings in case of failure to agree.—In case of failure to agree, the commissioners may commence an action in the court of common pleas of either county to have the court fix the amount to be paid for the use of the outlet. The petition should set forth the construction of the ditch and the failure to agree or pay for the use of the outlet, and pray the court to appoint commissioners and fix the amount to be paid.[3]

Proceedings of the court.—The court being satisfied that the

[1] Enacted April 23, 1891, 88 Laws, 350.

If this act is to be construed as authorizing one person to enter upon and make use of the lands of another without the consent of the latter, its constitutionality may be questioned.

[2] Enacted April 23, 1891, 88 Laws, 350.

[3] Enacted March 20, 1889, 86 Laws, 123.

facts are as stated above, is required to appoint three disinterested freeholders not residents of either county, who are required within thirty days thereafter, upon actual view of the outlet and ditch or ditches whose waters flow into the outlet, to estimate and report to the court the amount which should justly be paid for the use of the outlet.[1]

Sink holes.—An act passed April 19, 1883, authorizes the township trustees to open, enlarge, widen, alter, deepen, wall up, and protect any sink hole or fissure, break or opening, in the earth or rock, situate in the township, under certain circumstances, and upon certain conditions therein set forth. The act is a long and elaborate one, but is not deemed of sufficient general interest to warrant its insertion. It may be found in the Laws, Vol. 80, page 206.

[1] Enacted March 20, 1889, 86 Laws, 123.

CHAPTER IX.

ELECTIONS.

When and Where Held.

Presidential election.—The presidential election is required to be held on the Tuesday next after the first Monday in November, of every fourth year, counting from the year 1880. 2968.

State and county elections.—The election for state and county officers is required to be held on the Tuesday next after the first Monday of November in each year. 2978.

Township elections.—On the first Monday of April annually, the electors of each township are required to assemble at the place appointed by the trustees (or by advertisement of the commissioners in case of a new township) for the purpose of electing township officers. 1442.

Where held.—All elections are to be held at such place within the township as the trustees may designate,[1] and they may lease or contract for a site on permanent lease, or otherwise, and erect thereon a house for that purpose. 1443, 2923.

[1] As amended, 86 Laws, 94.

Under the statutes, electors of a city are not entitled to vote for assessors and supervisors of highways, as officers of the township; but in the offices of township trustees, clerk, treasurer, justices of the peace, and constables, electors of a city have, in some, or in all respects, a like interest with the electors of the township outside the city limits, and are entitled to vote in the choice of the same. The State *v* Ward, 17 Ohio St. 544.

An action lies against township trustees for refusing a lawful vote, without proof of express malice. Jeffries *v.* Ankeny, 11 Ohio, 372.

NOTICE OF ELECTION.

How required.—It is provided that the township trustees shall give notice of township meetings, as follows:

Warrant to constable.—At least twenty days before the annual township meeting, the trustees must issue a warrant to a constable of the township, directing him to notify the electors of such township to assemble at the time and place appointed for the annual meeting; the warrant should enumerate the officers to be chosen at such meeting, and on the application of two or more freeholders of the township, for that purpose, the trustees are required to insert in it such other business, matter, or thing as it may be proposed to submit to the meeting. 1445.

NO. 44. FORM OF WARRANT.

To , Constable of Township, County, Ohio:

You are hereby directed to notify the electors of said township to assemble at , on the day of , 18 , between the hours of six A. M. and six P. M, for the purpose of choosing the following officers, to wit:

One trustee of said township.

One clerk (*or*, treasurer) of the same.

One justice of the peace for the same.

One constable for the same.

One assessor for the same.

Five supervisors of highways.

At the same time and place, the following proposition will be submitted to said meeting (*here insert the proposition or business to be submitted.*)

(Date.)

____ _____

____ _____

____ _____

Attest: *Trustees of Township.*

____ _____

Clerk of Township.

How published.—The constable must set up copies of the warrant in not less than three public places of the township, at least ten days before the election: but where the office of one or more of the trustees is vacant, the township clerk, together with the trustee or trustees in office, must issue the warrant aforesaid. 1446.

Officers of Election.

Four judges and two clerks of election for each township or precinct are appointed by the county board of elections, annually, at least ten days before the November election, from electors who are residents of the precinct, and the persons so appointed constitute the board of election officers of the precinct, and serve for one year from the date of their appointment, at which time their powers cease and determine.[1]

Not more than two judges and not more than one clerk can belong to the same political party or organization.[1]

The township trustees are ex officio judges of election, except that in townships not divided into precincts, if all the trustees be of the same political party, those two only whose terms expire in one and two years can serve in that capacity, and the defeated candidate for trustee who received the highest vote at the last preceding election is probably entitled to appointment as one of the other judges—if he is not of the same political party as the two trustees entitled to serve as judges.[2]

Clerks.—The clerk of the township is required to act as one of the clerks of election in the precinct where he resides, and

[1] 88 Laws, 449, sec. 9.

[2] There is some doubt on this point arising from the fact that section 1492, as amended, 86 Laws, 94, containing the provision as to the defeated candidate, is not repealed by the new ballot act, which does not provide for the other judges except by force of the general provision for appointment by the county board of elections, and that they shall not be of the same political party as the others. As there is no direct conflict between the acts, the proper construction seems to be that above given.

the other clerk to be an elector duly qualified and appointed by the county board of elections.[1]

Vacancies; how filled.—If at the opening of the polls in any precinct there is a vacancy in the office of clerk or judge, the same must be filled by the electors present, and from the political party which is entitled to the vacancy according to law.[1]

Oath of judges and clerks.—The clerks and judges of election must take and subscribe to the following oath, which is to be filed with the clerk of the county board of elections:

State of Ohio, *County, ss.:*

I do solemnly swear that I will support the constitution of the United States and of the State of Ohio, and to the best of my ability discharge the duties of judge , clerk of the election in and for precinct , township, county, at the next ensuing election, and I further solemnly swear that if in the discharge of my official duties I gain knowledge as to how any elector voted at said election I will not disclose the same.

(Signed,) ——— ———

Sworn to and subscribed before me this day of in the year .

——— ———

[*Title of officer.*][1]

Township officers, special provisions as to election of.—After the judges and clerks have been qualified at the annual township election, the electors must proceed to the election of one township clerk, one trustee, one township treasurer, and such number of constables as may be directed by the trustees, and one supervisor of roads by the electors of each road district, and one assessor for the township, or if the township is divided into two or more election precincts, then for each precinct in which such election is held; and the judges and clerks in discharging their duties in said election, are to be

[1] 88 Laws, 449, secs. 9, 10.

governed in all respects by the law regulating elections, but it is not necessary to send a poll-book to the clerk of the court of common pleas of the proper county; and in case any two or more persons have the highest and an equal number of votes for any one of the township offices directed to be filled, the clerk and judges of the election are to determine by lot which of the persons is duly elected.[1]

Terms of office.—The officers so elected hold their respective offices for the following terms, and until their successors are elected and qualified: supervisors of roads and assessors, one year; township clerk and treasurer, two years; and constables, three years; and trustees, three years; provided, that at the first annual election of any new township there must be elected three trustees, the one receiving the highest number of votes, to serve three years; the one receiving the next highest number of votes, to serve two years; and the one receiving the next highest number of votes, to serve one year; should any two or more of those elected receive the same number of votes, they, at the first meeting of the board after their election, must determine by lot the term for which each of them receiving an equal number of votes shall respectively hold the office; and provided further, that at the next annual election after the passage of this act, and at the first election of any new township, a treasurer must be elected for one year, and a clerk for two years, and thereafter a township treasurer and clerk can not be elected at the same annual election.[1]

Two challengers may be appointed by the precinct committeeman of each political party having candidates to be voted for at such election, who must be admitted to the polling place for the purpose of challenging electors in such precincts where the voters are not registered, and they may keep tally of the electors voting, and who must serve without compensation from the county, city, village or township, and who

[1] 1448, as amended, 85 Laws, 131.

must take the following oath, administered by one of the judges of election:

Oath of challenger.—"You do solemnly swear (or affirm) that you will support the constitution of the United States and of this state; that you will faithfully and impartially discharge the duties as official challenger, assigned by law; that you will not cause any delay to persons offering to vote further than is necessary to procure satisfactory information of the qualification of such person as an elector; and that you will not disclose or communicate to any person how any elector has voted at such election."[1]

Any voter may be challenged for cause by either of the challengers, judges or clerks of the election, and if he be so challenged, he must establish his right to vote as is now provided by law.[1]

Any elector of the precinct may send a written notification over his own signature of challenge to the right of any person or persons to vote, setting forth the reasons thereof, to the judges of election, and such person or persons may be challenged as hereinbefore provided.[1]

Nominations for Office.

Nominations for office are to be made as provided by law, and when not invalidated or withdrawn the name of such candidate must be printed on the ballot.[1]

Nominations by convention, caucus, etc.—Any convention, or any caucus or meeting of qualified electors, or any primary election held by such electors, or any central or executive committee representing a political party, may make one nomination for each office to be filled at the following election, and such nomination, to be valid, must be certified to the proper officers. Every such certificate of election or nomination must state such facts as are required for its acceptance, and must be signed by the proper officers of such convention, caucus, meeting, primary election or committee, who must

[1] 88 Laws, 449, secs. 11, 12.

add thereto their places of residence, and must be sworn to by them to be true to the best of their knowledge and belief, and a certificate of the oath must be annexed to the certificate of nomination or election. Such certificate may also state the names and address of a committee of such political party, and whether such committee has power to fill vacancies which may occur in such list of nominees.[1]

Nominations by writing.—Nominations of candidates for other offices may be made by nomination papers, signed in the aggregate for each candidate by qualified electors of the district or division for which such candidates are nominated, not less in number than one for every two hundred persons who voted at the next preceding annual election in such district or division. Signers of such nomination papers may insert in them the names and addresses of such persons as they desire, to the number of five, as a committee, who may fill vacancies caused by death or withdrawal. Each elector signing a nomination paper must add to his signature his place of residence, and each elector may subscribe to one nomination for each office to be filled, and no more. One of the signers to each such separate paper must swear that the statements therein are true, to the best of his knowledge and belief, and the certificate of such oath must be annexed.[1]

All certificates of nomination and nomination papers must, besides containing the names of candidates, specify as to each (1) the office for which he is nominated; (2) the party or political principle which he represents expressed in not more than three words; (3) his place of residence, with street and number thereon, if any.[1]

Certificates of nomination are to be filed with the county board of elections not less than twelve days previous to the day of election, and when filed, are open, under proper regulation, to public inspection. Such certificates are to be deemed valid unless objection is made within five days after the filing thereof. The objections are to be finally determined

[1] 86 Laws, 449, sec. 12.

by the county board of elections, or in case no decision can be arrived at by it, the same are to be summarily heard and determined by one of the judges of the court of common pleas, to be selected by the board, or if they can not agree, to be chosen by lot. The decision of the board, or of the judge, if it be referred to him, is final.[1]

Vacancy in nomination.—Should any person so nominated die, withdraw or decline the nomination, or should any certificate of nomination be insufficient or imperfect, the vacancy thus occasioned may be filled in the manner required for original nominations, but must be certified to the county board of elections twelve days previous to election day. If, when the original nomination was made, there was delegated to a committee the power to fill vacancies, it may proceed to fill the same. The chairman and secretary of such committees must thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such other information as is required to be given in an original certificate of nomination. The certificate so made must be executed, acknowledged, and sworn to in the manner prescribed for the original certificate of nomination, and will, upon being filed with the county board twelve days before election, have the same force and effect as an original certificate of nomination.[1]

Party device on ballot.—If the certificate of nomination of any state convention shall request that the figure or device selected by such convention be used to designate the candidates of such party on the ballots for all elections throughout the state, such figure or device must be so used until changed by request of a subsequent state convention of the same party. Such device may be the figure of a star, an eagle, a plow, or some such appropriate symbol, but the coat of arms

[1] 88 Laws, 449, sec. 13.

or seal of the state or of the United States, the national flag, or any other emblem common to the people at large, must not be used as such device.[1]

BALLOTS.

All ballots are to be provided by the county board of elections, and are required to be printed according to law, and to contain the names and party or political designation of all candidates whose nominations for any offices specified in the ballot have been duly made and not withdrawn. And no other ballot can be voted or counted at such election.[2]

The arrangement of the ballot must, in general, conform as nearly as practicable to the plan hereinafter given, and the devices named and lists of candidates of the various parties must be printed in parallel columns, in such order as the secretary of state may direct, precedence, however, being given to the party which polled the higher number of votes for the head of the ticket in the next preceding election.[2]

Whenever the approval of a constitutional amendment or other question is to be submitted to a vote of the people, such question must be printed on the ballot after the list of candidates. The ballots must be so printed as to give to each elector a clear opportunity to designate by a cross mark (x) in a blank inclosed space at the left hand of, or within the lines inclosing the name of each candidate, his choice of candidates and his answer to the question submitted.[2]

On the back must be printed "official ballot," the date of the election, and fac-similes of the signatures of the members of the board which has caused the ballot to be printed.[2]

[1] 88 Laws, 449, sec. 13. [2] Id., sec. 14.

Consecutive number.....
Name of Voter.....
Residence.....

DEVICE.	DEVICE.	DEVICE.
DEMOCRATIC TICKET.	REPUBLICAN TICKET.	PROHIBITION TICKET.
For Governor, JOHN DOE.	For Governor, RICHARD ROE.	For Governor, THOMAS JONES.
For Auditor of State,	For Auditor of State,	For Auditor of State,

88 Laws, 449, sec. 14.

They must be printed on the same leaf with a double stub and separated therefrom by a perforated line, and must be bound, with the stubs attached thereto, into books, one for each voting precinct, which book must contain at least twice as many ballots as there were votes cast at such precinct at the preceding election. Upon the covers of such books must be printed the designation of the precinct for which the ballots have been prepared.[1]

The main stub must be printed as follows: Consecutive numbers—(After these words the consecutive numbers must be printed, beginning with one, and increasing in regular numerical order); provided, however, that any county board may provide that such consecutive numbers be not printed, but written by the ballot officer before delivering the ballot to the elector.[1]

Name of voter—(After these words the clerk must set down the voter's name.)

Residence—(After this word the clerk is to set down the voter's residence.)[1]

Booths.—The county board of elections must cause the polling places in their respective counties to be suitably provided with a sufficient number of voting shelves, at which electors may conveniently mark their ballots, so that in the marking thereof they may be screened from the observation of others, and a guard-rail so constructed and placed that only such persons as are inside said rail can approach within six feet of the ballot-boxes or of such voting shelves. The arrangement must be such that neither the ballot-boxes nor the voting shelves shall be hidden from view of those outside the said rail. The number of such voting shelves must not be less than one for every seventy-five electors qualified to vote at such polling places. No person other than the judges of election and such officers as are provided for by the statutes of this state or of the United States, and electors admitted as

[1] 88 Laws, 449, sec. 14.

herein provided, can be permitted within said rail, except by authority of the election officers, for the purpose of keeping order and enforcing the law. Each voting shelf must be kept provided with proper supplies and conveniences for marking the ballots.[1]

Delivery of ballots, tally sheets, etc.—Not less than three days before any general election the county board of elections must summon the presiding judges of election in each precinct in such county, to appear before the board of elections and receive the necessary blanks, poll-books, tally-sheets, necessary certificates, cards of instructions and ballots for such precincts, and deliver to such judge the sealed packages of ballots, blanks, poll-books and other required papers.[2]

Lost or destroyed ballots.—If, by any accident or casualty, the ballots or other required papers delivered to any judge of elections or other messenger shall be lost or destroyed, it is the duty of such person in custody to report the loss at once to the county board of elections from which the same were obtained, and make affidavit of the circumstances of the loss, whereupon such board must at once re-supply such person. In case such person in custody fail or refuse to report and make proof of the loss, any qualified elector may do so, and thereupon such board must at once send a new supply by special messenger, as provided in other cases.[3]

Extra or additional ballots.—In case no ballots shall have been delivered at any polling place before the opening of the polls, or if extra ballots shall, at any time during the time the polls remain open, be required, it is the duty of the county board of elections, upon a requisition in writing signed by a majority of the election judges of such precinct, wherein the reasons for demanding such ballots must be fully set out, to secure the same as speedily as possible, and, if necessary, such board may have extra ballots printed; provided, however, that such ballots must conform, as nearly as possible, to the

[1] 88 Laws, 449, sec. 15. [2] Id., sec. 7. [3] Id., sec. 8.

original ballots, and the printing and the care of the same must be under the same provisions and penalties as the printing and care of the other ballots.[1]

Ballot-boxes.—It is the duty of the precinct boards of election to furnish all the ballot-boxes necessary in their respective precincts, and the precinct election boards must take into their care and custody all the ballot-boxes and equipments necessary at their respective polling places, and preserve them until demanded by the county board, and they must have care and custody of the same, and direct in whose custody they must remain after an election. The trustees of townships must turn over to the precinct election board the ballot-boxes they now have in their possession.[1]

Opening the Polls.

Hours for opening and closing polls.—The polls must be opened at six o'clock in the forenoon, and closed at six in the afternoon of the same day.[2] 2929.[3]

Opening the ballot-box.—It is the duty of the judges of election, or one or more of them, in presence of and under the direction and supervision of the others, immediately before proclamation is made of the opening of the polls, to open the ballot-boxes in the presence of the people there assembled, extending at the same time, to such as desire it, the privilege

[1] 88 Laws, 449, sec. 7.

[2] Id., sec. 19.

After the polls have once been opened, in pursuance of the statute to regulate elections of May 3, 1852, requiring them to be open "between the hours of 6 and 10 in the morning, they can not be closed for any purpose until 6 o'clock in the afternoon, without rendering the election illegal and void. State ex rel. Brown *v.* Ritt, 7 Am. L. R. (n. s.) 88.

The provisions of the election law, that the polls should be open from between the hours specified for opening and closing, is directory, and a departure from the strict observance of its provisions does not necessarily invalidate the election, when it appears that no fraud has been practiced and no substantial rights violated. Fry *v.* Booth, 19 Ohio St. 25.

[3] As amended, 88 Laws, 99.

of examining the same in the presence of the judges; and it is their further duty to turn the boxes upside down, so as to empty them of any thing that may be in them, and then lock them—all of which must be done in the presence and full view of the people, and the ballot-boxes must not be reopened until the close of the polls for the purpose of counting the ballots. 2937.

Packages to be opened publicly.—At the opening of the polls the seals of the packages received from the county board of elections are to be publicly broken, and the packages opened by the presiding officer. The cards of instruction are to be immediately placed in each voting shelf or compartment, and in such other places as the election officers may determine upon.[1]

Separate ballot-boxes and returns in certain precincts.—In precincts composed of parts of two or more townships, in all elections for township officers, or for township purposes, separate ballot-boxes are required to be provided for the different townships represented; and it is provided that the judge to whom any ticket is delivered shall, upon receipt thereof, announce in an audible voice, the name of the elector and of the township in which the elector resides, and shall deposit such ticket in the ballot-box of such township; and that at elections for township officers or township purposes, the officers of such election shall keep separate tally-sheets for the different townships represented, and shall make correct returns in accordance therewith; in such manner and at such time as is provided by law for like elections, to the clerks of the proper township. 1397.

Casting the Ballot.

Entry of voter's name or number.—Any person desiring to vote and legally entitled to vote at such election must give his name and residence to the election officer holding the ballots, who must write the same upon the main stub of the ticket in the blank places provided therefor. Such officers must then

[1] 88 Laws 449, sec. 8.

mark upon the secondary stub the elector's registered number, in all precincts in which a registration law is in force, and in all other precincts the elector's full name.[1]

Ballot given to voter.—One of the election officers must then detach the ballot, with the secondary stub attached, from the main stub, and must hand it to the elector, and the elector must be allowed to enter the place inclosed by the guard-rail. The officer can give him one and only one ballot.

Marking the ballot.—On receipt of his ballot, the elector must forthwith and without leaving the inclosed place retire alone to one of the voting shelves, as provided, and prepare his ballot by marking in the appropriate margin or place a cross mark (X) immediately preceding the name of the candidate of his choice for each office to be filled and in case of a question submitted to the vote of the people, by marking in the appropriate margin or place a cross mark (X) against the answer which he desires to give. Should any elector desire to vote for each and every candidate of one party, he must make a cross mark (X) before the name of that party in the blank space provided therefor; provided, however, that if a cross mark be made before the name of any party, and a cross mark be also made before the name of one or more candidates of a different party or parties, the vote must be counted for the candidates so marked, and not for the candidates for the same office of the party so marked; but the vote must be counted for the other candidates under such party name or designation.[1]

Errors in marking ballots; how treated.—If the elector mark more names than there are persons to be elected to an office, or if, for any reason, it is impossible to determine the voter's choice for an office to be filled, his ballot must not be counted for such office. No ballot can be rejected for any technical error which does not make it impossible to determine the voter's choice. Nothing in the law contained is to be so construed as to prevent a voter from voting for any qualified per-

[1] 88 Laws, 449, sec. 16.

son other than those whose names are printed on the ballots, for any office to be filled, by writing in black pencil mark or ink, under the designation of the office, the name of such person and placing before such name a cross (×) mark. All markings upon the ballots must be made by black lead pencil or ink.[1]

Folding ballot.—Before leaving the voting shelf, the elector must fold his ballot without displaying the marks thereon, except the indorsements, and the *fac simile* of the signatures of the members of the board of election must be disclosed.[2]

Deposit of ballot; stubs; five-minute rule.—One of the election officers must receive the ballot, detach the secondary stub bearing the elector's registered number or name, and deposit the ballot in the ballot-box. The secondary stubs must be preserved until the polls are closed, and must then be destroyed, before the ballot-box is opened. The elector must mark and vote his ballot without undue delay, and must leave said inclosed place as soon as he has voted. No such elector can be allowed to occupy a voting shelf, already occupied by another, or to occupy a voting shelf for more than five minutes, in case all such shelves are in use and electors are waiting to occupy the same, or to speak to, or to converse with any one, except as herein provided, while within such guard-rail. No elector, not a judge of elections, may be allowed to re-enter said inclosed place during said election. No more electors can be allowed to enter within said rail at any one time than there are voting shelves provided. It is made the duty of the judges of elections to secure the observance of these provisions.[2]

Return of ballot if not voted; second or third ballot, when given.—Every elector who does not vote a ballot delivered to him by the ballot officer must, before leaving the polling place, return such ballot to such officer. If any elector soil or deface a ballot so that it can not be used, he may successively

[1] 88 Laws, 449, sec. 16. [2] 88 Laws, 449, sec. 17.

obtain others, one at a time, not exceeding in all three, upon returning each ballot so soiled or defaced.[1]

When voter may be assisted to mark ballot.—Any elector who declares to the presiding judge of election, that for any reason he is unable to mark his ballot, must, upon request, receive the assistance of two of the judges of election, belonging to different political parties, in the marking thereof, and they must thereafter give no information in regard to the matter. The presiding judge may, in his discretion, require such declaration of disability to be made by the elector under oath before him.

No ballot without the official indorsement can be allowed to be deposited in the ballot-box, and none but the official ballots provided as above set forth can be counted.[1]

Ballot to be delivered to judge.—Each elector must, in full view of the people there assembled, deliver to one of the judges of the election a single ballot or piece of paper, with the name or names of the person or persons voted for, and a pertinent designation of the office which he or they may be intended to fill written or printed thereon. 2949.

Name of voter proclaimed.—The judge to whom any ticket is so delivered must, upon receipt thereof, pronounce with an audible voice the name of the elector. 2950.

Placing ballot in the box.—If no objection is then made, and the judges are satisfied that the elector is a citizen of the United States and legally entitled, under the constitution and laws of this state, to vote at the election, the ticket must be immediately placed in the box, without any inspection of the names upon it. 2950.

Entry of name in poll-book.—The clerks of election must enter the name of the elector and number the same in the poll-books agreeably to the form provided. After each challenged voter's name whose vote has been received, the clerks are to write the word "sworn." 2950, 2944.

Heading of ballots.—Whenever any ballot with a certain

[1] 88 Laws, 449, sec. 17.

designated heading contains printed thereon, in place of another, any name not found on the regular ballot having such heading, such name so found is to be regarded by the judges of election as having been placed there for the purpose of fraud, and such ballot can not be counted for the name so found; and it is unlawful for any person to print for distribution at the polls, or to distribute to any elector, or knowingly to vote any such ballot. 2952.

Trustees may remove disorderly persons.—The trustees have the power at every election, or township meeting, to cause any and every disorderly person to be removed, and, if necessary, to be confined until the close of such election or meeting; and every constable present must obey their orders and directions for the purpose of preserving order at such meeting. 1444.

When judges may disperse obstructing persons. If two or more persons congregate together in and about any voting place, during the receiving of ballots thereat, so as to hinder or delay any elector in casting his ballot, the judges of election, upon complaint made, and being satisfied that substantial ground of complaint exists, are required to order all such persons to disperse, and upon refusal so to disperse, such persons may be fined not more than three hundred nor less than twenty dollars, or imprisoned in the county jail not exceeding six months, or both. 2951.

Proceedings after the Close of the Polls.

Signing of poll-books.—The first duty of the judges, after the close of the polls, is to sign the poll-books; and of the clerks, to attest the same, after having counted the names and set down the number at the foot of the poll-books. 2956.

Counting the votes.—The judges and clerks must then immediately proceed to count the votes and certify the same according to law.[1]

Counting the votes.—After the poll-books are duly signed,

[1] 88 Laws, 449, sec. 18.

the ballot-boxes are to be opened, and the ballots taken out, one at a time, by one of the judges, who is required to read, distinctly, while the ticket remains in his hand, the name or names therein contained, and then deliver it to the second judge, who shall examine the same, and pass it to the other judges, who are to string the tickets on a thread, and carefully preserve them until the close of the counting; the same method to be observed in respect to each ticket taken from the ballot-box, until the number taken out is equal to the number of names in the poll-books. 2957.[1]

Duty of clerks as to counting the votes.—The clerks must enter, in separate columns, by tallies under the names of the persons voted for, all the votes so read out by the judges. 2958.

Double ballots.—Whenever two or more ballots are found folded or rolled together, it must be held conclusive evidence that they are fraudulent. 2953.

Ballot containing too many names for same office.—If any ballot be found to contain a greater number of names for one office than the number of persons required to fill the office, it is to be considered fraudulent as to all the names designated to fill such office, but no further. 2954.

Ballot containing less than enough names not fraudulent.—A ballot is not to be considered fraudulent for containing a less number of names than are authorized to be inserted. 2955.

Proclamation of result.—The number of votes enumerated for each candidate is to be proclaimed to the people present, after the counting is completed. 2959.

Counting not to be postponed, or ballot-box removed.—A judge of election who, after the counting of votes commences, as required by law, postpones the counting of votes cast at such election, or adjourns for any time, or to any place, or removes the ballot-box from the place of voting, or from the custody or presence of all the judges, is liable to a

[1] 88 Laws, 449, sec. 18.

fine of not more than one thousand nor less than one hundred dollars, and to be imprisoned not more than ten days. 7056.

Announcing the result.—When the result is ascertained it must be immediately announced by one of the judges in front of the polling place, and a copy certified by the judges and clerks posted on the front of the polling place, and a certified copy thereof given to the persons hereinafter designated as being entitled to be present at the counting of the votes.[1]

Persons admitted to inspect counting of votes.—The county executive committee of each party having a ticket to be voted at an election may designate a suitable person to be present at and witness and inspect the counting of the vote in each precinct, who must be admitted to the voting place, and who is entitled to a copy of the certificate of the result of the counting, but no other person except the election officers can be admitted to said polling place before or after the count begins except as provided by law. When all these requirements are complied with the judges must, in the presence of the clerks, and the inspectors provided for in the preceding section, destroy the ballots voted or mutilated, and the ballots remaining unvoted; provided, that if there are any ballots cast and counted or left uncounted, concerning the legality or regularity of which there is any doubt or difference of opinion in the minds of the judges of election, said ballots must not be destroyed, but sealed up and returned to the clerk of the court with the returns of the election for such judicial or other investigation as may be necessary, with a true statement as to whether they have or have not been counted, and if counted, what part and for whom.[1]

Certifying the Returns.

The judges and clerks must make out their returns of election and the tally-sheets thereof in triplicate, signed and certified as now required by law for the general election for state, district, circuit and county officers. One copy thereof

[1] 88 Laws, 449, sec. 18.

must be immediately transmittted to the county board of elections, one copy to the clerk of the court of the county, and one copy, with the poll-books of the election, must be filed with the township clerk, to be preserved for one year after the date of such election. Such returns must be securely sealed up in an envelope, and addressed transversely upon the upper end thereof to the proper officer or board with whom they are to be deposited, with the designation of the township, precinct and county, which must be followed by the certification herein provided for, and must be delivered by one of the judges of election to the proper board and officers. The judge to make such delivery must be determined by lot if they can not otherwise agree.[1]

PENALTIES.

Penalty for knowingly counting fraudulent vote.—A judge of any election who knowingly permits any ballot or ticket fraudulently placed in the ballot-box, if the same can be designated, to be counted, is liable to imprisonment in the penitentiary not more than three nor less than one year. 7057.

Penalties for misconduct of judges.—A judge of an election who knowingly receives or sanctions the reception of a vote from any person not having all the qualifications of an elector prescribed by law, or receives, or sanctions the reception of a ballot from any person who refuses to answer any question put to him in accordance with the requirements of the laws of this state relating to elections, or refuses to take the oath prescribed by the laws, or refuses or sanctions the refusal of any other judge of the election board to which he belongs, to administer any oath required by law, or refuses to receive, or sanctions the rejection of, a ballot from any person, knowing him to have all the qualifications of an elector prescribed by law, and a judge

[1] 88 Laws, 449, sec. 18, and R. S. 2961.

or clerk of an election on whom any duty is enjoined by law, who willfully neglects the same, or is guilty of any corrupt conduct in the execution of his duty, is required to be fined not more than one thousand nor less than three hundred dollars, and imprisoned not more than six nor less than three months.[1] 7058.

Numerous and severe penalties are provided by the new ballot act as well as by existing laws against bribery and intimidation of voters, or fraud or misconduct on their part, against any elector allowing his ballot to be seen, or any attempt to interfere with or converse with an elector while within the guard-rail, or marking his ballot, or endeavoring to induce elector to show how he marked his ballot, against officers for refusal to serve, or for any misconduct, and against almost any and every conceivable infraction of the election laws including the provisions as to nomination of candidates. It is deemed unnecessary to insert those provisions here, but they will be found in the laws, vol. 88, pages 464 to 468, and the Revised Statutes, sections 7045 to 7066.

Compensation of Officers.

The judge of election called by the county board of elections to receive the blanks, poll-books, tally-sheets, ballots, cards of instruction, and other documents, is entitled to receive one dollar for such service, and, in addition thereto, mileage at the rate of five cents per mile to and from the county seat, if he lives more than one mile distant therefrom. And the judge of election carrying the returns of the precinct to the county board of elections, is entitled to receive like compensation. The judges and clerks are each entitled to receive as compensation the sum of one dollar and fifty cents for each election.[2]

How paid.—It is provided that all proper and necessary

[1] 88 Laws, 449, sec. 18, and R. S. 2961. [2] 88 Laws, 449, sec. 9.

election expenses shall be paid out of the county treasury, except that for "local" elections, which probably include township elections, the expense of printing and delivering ballots and cards of instruction is made a charge upon the township where the election is held.[1] And although not mentioned the spirit of the statutes taken together would seem to require that the compensation of the judges and clerks of township elections should be paid by the township, and of all other elections by the county. The foregoing provisions do not apply to the election of school directors, which is expressly excepted from the operation of the general election laws by the terms of the new act.[1]

Qualifications of Electors.

Who may vote.—Any male citizen of the United States, over the age of twenty-one years, who has been an actual resident of the state for one year, of the county for thirty days, and of the township for twenty days next preceding the election, unless disqualified by conviction of a crime punishable by imprisonment in the penitentiary, is entitled to vote in such township, and no other, except where the person offering to vote is the head of a family, and has actually resided in the state and county the required length of time, and has, *bona fide*, removed from one township to another of the same county, or from a village or city to a township of the same county; in which case he is entitled to vote in the township where he *bona fide* resides with his family on the day of the election.[2] 2945.

[1] 88 Laws, 449, sec. 5.

[2] On the organization of a city of the second class, divided into wards, the boundaries of which city are not coterminous with those of any township, the territory within such city does not cease to be a part of the township or townships within the limits of which it is situate. The State *v.* Ward, 17 Ohio St. 543.

Where the township has not been divided into percincts, the elec-

Electors to vote in precincts where they reside.—It is provided that qualified electors shall vote at the polls of the precinct in which they have a legal residence. 2927.

Rules for determining a person's place of residence.—The following rules are prescribed by the statute for determining the residence of persons offering to vote:

I. *Place of residence is the fixed habitation.*—That place shall be considered and held to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

II. *Temporary absence does not change residence.*—A person shall not be considered or held to have lost his residence who shall leave his home, and go into another state, or county of this state, for temporary purposes merely, with an intention of returning.

III. *Temporary stay in township does not gain residence.*—A person shall not be considered or held to have gained a residence in any county, in this state, into which he shall come for temporary purposes merely, without the intention of making such county his home.

IV. *Married man's residence fixed by that of his family.*—The place where the family of a married man resides shall be considered and held to be his place of residence, except where the husband and wife have separated, and live apart; then the place where they resided at the time of the separation shall be considered and held to be his place of residence, unless he shall afterward, and during the time of such separation, remove from such place, in which case the county, township, city, or village in this state, in which he shall reside the length of time required by the provisions of this section to entitle a person to vote, shall be considered and held to be his place of residence.

tors of the city are entitled to vote for the township officers only at the general polls of the township. Ibid.

And where the township *has* been divided into precincts covering territory within the city limits, the electors of the city are entitled to vote only at the township poll of the precinct in which they reside. Ibid.

A person, the offspring of a white man and a half-breed Indian woman, is a lawful voter. Jeffries *v.* Ankeny, 11 Ohio, 372.

V. *Effect of removal to another state.*—If a person remove to another state with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in this state.

VI. *Effect of removal for an indefinite time.*—If a person remove to another state with an intention of remaining there for an indefinite time and as a place of present residence, he shall be considered and held to have lost his residence in this state, notwithstanding he may entertain an intention to return at some future period.

VII. *Intention without removal avails nothing.*—The mere intention to acquire a new residence without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention.

VIII. *Person voting in another state loses residence in this.*—If a person shall go into another state, and while there exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this state.

IX. *Judges to settle all questions.*—All questions of the right to vote shall be heard and determined by the judges of election. 2946.

When inmates of soldiers' home may vote.—Disabled soldiers who are inmates of a national asylum for disabled volunteer soldiers, who are citizens of the United States, and have resided in this state one year next preceding the election, and are otherwise qualified, are to be held and deemed to have their lawful residence in the county and township in which the asylum is located. 2947.

Inmates of infirmary of any city of the first or second class, or of any county containing a city of the second grade, second class can only vote in the precinct or township where they resided when sent to the infirmary. 85 Laws, 88.

Proceedings upon challenge.—If a person offering to vote is challenged as unqualified by one of the judges of election (and it is the duty of each judge to challenge any person offering to vote whom he may know or suspect not to be a qualified elector), or by an elector, one of the judges must tender him the following oath or affirmation:

"You do swear (*or*, affirm) that you will fully and truly

answer all such questions as shall be put to you touching your place of residence and qualifications as an elector at this election." 2939, 2940.

I. *Proceedings when challenge is on ground that the party is not a citizen.*—If a person is challenged on the ground that he is not a citizen, one of the judges must put the following questions:

1. Are you a citizen of the United States?

2. Are you a native or naturalized citizen?

Must produce certificate of citizenship.—If the person claim to be a naturalized citizen, he must produce his certificate of citizenship, and state, under oath or affirmation, that he is the identical person named therein, before his vote can be received; provided, that the production of the certificate is to be dispensed with, if the person offering to vote state, under oath or affirmation, when and where he was naturalized, that he has had a certificate of his naturalization, and that against his will the same is lost, destroyed, or beyond his power to produce to the judges of the election; provided, further, that if he shall state, under oath or affirmation, that by reason of the naturalization of his parents, or one of them, he has become a citizen of the United States, and when and where his parent or parents were naturalized, the certificate of said naturalization need not be produced. 2940.

II. *Proceedings when challenge is on ground of non-residence in state.*—If the person be challenged on the ground that he has not resided in the state for one year preceding the election, the following questions are to be put to him:

1. Have you resided in this state for one year immediately preceding this election?

2. Have you been absent from this state within the year immediately preceding this election? If yes, then—

3. When you left, did you leave for a temporary purpose, with the design of returning, or for the purpose of remaining away?

4. Did you, while absent, look upon and regard this state as your home?

5. Did you, while absent, vote in any other state?

III. *Challenge on ground of non-residence in county or township.*—If the person be challenged on the ground that he is a non-resident of the county or precinct, the following questions are to be put to him:

1. Have you resided in this county for thirty days last past?

2. Have you resided in this precinct for twenty days last past?

3. When did you last come into this county?

4. When you came into this county, did you come for a temporary purpose merely, or for the purpose of making it your home?

5. Did you come into this county for the purpose of voting in this county?

6. Are you now an actual resident of this precinct or ward? 2940.

IV. *Challenge on ground of being under age.*—If the person be challenged on the ground that he is not twenty-one years of age, the following question is to be put to him:

Are you twenty-one years of age, to the best of your knowledge and belief? 2940.

Other questions to be put, if judges deem it necessary.—Under any challenge, the judges may put such other questions as they may deem necessary to test the qualifications of the person offering to vote, as an elector. 2940.

Vote rejected for refusal to answer.—If the person challenged refuse to answer fully any lawful questions put to him, his vote must be rejected. 2941.

Further oath, if the challenge be not withdrawn.—If the challenge be not withdrawn after the person has answered the questions put to him, one of the judges must tender to him the following oath:

"You do solemnly swear (*or*, affirm) that you are a citizen of the United States, of the age of twenty-one years; that you have been an inhabitant of this state for one year next preceding this election; that you are now an

actual resident of this precinct, and that you have not voted at this election." 2942.

Refusal to take the oath causes rejection of vote.—If the person refuses to take the oath or affirmation so tendered to him, his vote must be rejected. 2943.

Judges may take other testimony.—After the party has taken the oath, the judges must nevertheless refuse his vote, unless they are satisfied, from record evidence or the testimony adduced before them, that he is a legal voter; and they are authorized to administer oaths to all witnesses brought before them to testify to the qualifications of a person offering to vote. 2943.[1]

Division of precincts.—When five hundred votes or more have been cast at the last preceding election in any precinct, the county board of elections is required to give ten days' notice at least thirty days prior to an election, by publication in two leading papers of opposite politics published in the county, that the same is to be divided into two or more precincts, on a day named in said notice. On said day, or some subsequent day to which the matter may be adjourned by the board, the matter of dividing said precinct as near equally in voters as possible must be heard, considered and determined by the board, and if said board can not agree, the question must be submitted to the probate judge, upon a written statement of such disagreement, signed by at least two members of the board, who must forthwith determine the same.[1]

Notice of election in divided township.—In all townships which have been divided into election precincts, it is the duty of the trustees to give fifteen days' notice of the time and place of holding elections in such precincts, by posting up written or printed notices in such number of places as to them seem proper for the information of the electors. 1392.

[1] 88 Laws, 449, sec. 20.

CHAPTER X.

FENCES AND INCLOSURES.

SECTION 1. PARTITION FENCES.

Adjoining owners each to pay for half of partition fence.—Whenever a fence, of whatever materials constructed, and in all respects such as a good husbandman ought to keep, is erected by any person on the line of his land, or that on which he has a lease for one or more years, and the person owning the land adjoining thereto, or holding a lease on the same for three or more years, makes, or causes to be made, or has, an inclosure on the opposite side of such fence, so that such fence may answer the purpose of inclosing his field, meadow, lot, or any other inclosure, such person last named must pay the owner of the fence already erected one-half of the value of so much thereof as serves as a partition fence, to be adjudged by the township trustees. 4239.

Amount may be recovered by suit.—The amount so adjudged by the trustees, if not paid, may be recovered in a civil action, before any court of competent jurisdiction, by the owner of the fence, with costs of suit. 4239.

Must be kept in repair in equal shares.—The owners, or lessees for one or more years, of adjoining lands must keep up and maintain the partition fences between them in equal shares. 4240.

Controversies as to repairing partition fences, how settled.—When any controversy arises about the rights of the owners of adjoining premises, both of which are inclosed, or occupied and improved, as to their obligation to build or maintain partition fences in good repair, either party may apply to the trustees of the township to view the fence and make an order assigning the portion to be built or repaired by each.[1] 4242.

[1] *80 Ohio Laws*, 88.

Proceedings upon the application.—Upon such application being made, the trustees must give at least ten days' notice to all parties who may have any interest in the title or possession of the premises, and the repair or construction of the fence. In case the owner is a non-resident of the county, the notice must be served on his authorized agent, or the person occupying the premises. At the same time a copy of the notice must be mailed to the owner, if his post office address is known. 4242.[1]

No. 56. FORM OF NOTICE BY TRUSTEES TO OWNERS.

To :

You are hereby notified that has applied to the trustees of township to view the fence between your premises and his, and to assign the portion of such fence to be kept in repair by each of you respectively, and that said application will be heard and determined by us, at , on the day of , 18 , at o'clock.

(Date.) (Signed,)

——— ———
——— ———
——— ———
Trustees of Township.

——— ———
Clerk of Township.

Proceedings of the trustees.—The trustees must then proceed, in accordance with the notice, to view the fence or fences, and assign to each party, in writing, his equal share of such partition fence, to be by him constructed or kept up and maintained in good repair—in all respects a good and substantial fence. 4242.

The award or assignment must provide the time within which the fence and each of its parts shall be constructed or repaired, if the same be necessary. 4242.[1]

No. 57. FORM OF ASSIGNMENT.

In the matter of the controversy between and , as to the repair of their partition fence:

Application having been made by to the undersigned, trustees of township, county, Ohio, to view the partition fence separating his meadow (*or*, other field, *as the case may be*) from the woodland of adjoining, and to make an order specifying the portions thereof to be kept

[1]82 Laws, 40.

in repair by each, and due notice having been given to the said more than ten days previous to the hearing of said application, and also to , who claims an interest in said premises; and having viewed said fence and the premises of the parties thereunto adjoining, and heard the application and the statements of the parties with respect to the same, at the time and place specified in said notice, it is hereby ordered that the said parties be and they are hereby required to put the following portions of said fence in good repair, within days from date hereof, to wit:

To is assigned that portion of the fence beginning at and running thence to .

To is assigned that portion of the fence beginning at and running thence to .

And said parties are hereby required to keep the said portions of said fence, so assigned to them, in good order and repair until a new assignment shall be made.

(Date.) (Signed,) ——— ———
——— ———
——— ———

——— ——— *Trustees of Township.*
Clerk of Township.

Record, etc.—The award or assignment is binding upon the parties and succeeding occupants for one year thereafter, and until a new assignment is made. 4242,[1] 4244.

Proceedings to enforce award.—If either party fails to comply with the award, the trustees on the application of the party aggrieved may authorize some person to build or repair that portion of the fence assigned to the party in default, or the aggrieved party may give to the other fifteen days' notice in writing, in the same manner that notice is required to be given of proceedings to assign the part to be built or repaired, requesting him to comply with the award of the trustees; and on failure to comply, the party giving notice may build or repair the fence, charging for the labor and materials. 4243.[2]

No. 58. Form of Notice to Comply with Award.

To :

You are hereby notified and requested to comply with

[1] 82 Ohio Laws, 40. [2] 82 Laws, 215.

the order, heretofore made by the trustees of this township, assigning the respective portions of the partition fence between our lots, to be kept in repair by each of us. Unless you proceed to repair the portion of the fence assigned to you within fifteen days from date hereof, I shall take steps to have the same done at your expense.

Respectfully,

(Date.) ——— ———

Bill must be presented.—After completion of the building or repairing, the party doing the same must present to the other party an itemized account, giving the amount of labor and materials, and demand payment thereof. 4243.[1]

In case of failure to pay bill, proceedings, etc.—In case of failure to pay the account so presented, it is the duty of the trustees, upon demand by either party, to proceed to examine said fence and estimate the value of the labor and material, which being determined, they are required to give to each party a statement thereof, in writing. 4243.[1]

How such award may be enforced.—In case of failure to pay the amount of such award, the other party may proceed to collect the same, together with the costs, in any court of competent jurisdiction, and the written statement of the trustees aforesaid is to be held by the court *prima facie* evidence of the value of such labor and material. All the costs of views, assignments, reviews, and other meetings of the trustees must be adjudged by them against the party in default, if there be but one, but if both parties are at fault the costs must be equally divided between them. 4243.[1]

When the fence is on a county or township line.—In case the fence in controversy is upon a county or towhship

In an action brought under the act of May 3, 1859 (S. & C. 81, 648), to recover one-half the value of a partition fence, the appraisal of the township trustees duly made, in pursuance of the provisions of the act, is, unless impeached for mistake or fraud, conclusive with respect to value, and of the fact that the fence, in character and quality, meets the requirements of the statute; but such appraisal is not evidence of any other fact (and can not conclude or affect questions not determinable by mere examination, such as whose property the fence is, who

[1] As amended, 82 Laws, 215.

line, the trustees of the adjoining townships have concurrent jurisdiction, and the trustees of either township may be summoned by either party; and either party may call also the trustees of the other township, in which case they are required to act jointly, but the record is to be made in both townships. 4245.

Trustees liable to penalty for non-performance of duty.—A trustee who refuses or neglects to perform any of the duties enjoined on him by the act, is liable in a penalty of not less than five nor more than fifty dollars, to be recovered by civil action in the name of the state; and the amount recovered is required to be paid into the township treasury for township purposes.

Re-assignment of parts of fence, when and how to be had.—At any time after the expiration of a year from the date of assignment, any party interested may apply to the trustees for a re-examination and re-assignment, and the proceedings throughout are to be the same, and have the same force and effect, as in case of an original assignment. 4244.

Removal of fence.—Either party wishing to vacate his part of an inclosure, or make a lane or passage between adjoining inclosures, is at liberty to remove his part of the

erected on, who owns the adjoining inclosures—p. 9). Robb *v* Brachmann, 24 Ohio St. 3.

The plaintiff in such action is not precluded from recovering, by the fact that the fence is a better or more expensive one than would have satisfied the requirements of the statute. (But it is the duty of the appraisers to deal with it as a fence, and to determine, not what the materials are worth for any other purpose, and not necessarily what the materials and labor cost, but what, in the condition in which they find it, is its value as a fence—p. 11.) Ibid.

Nor does the fact that the fence does not conform to the boundary line between the lands of the respective parties necessarily constitute a defense to such action. It is sufficient upon this point if it was constructed and maintained as and for such the partition fence on giving six months' notice, in writing, to the party owning or occupying the adjoining in-

fence on giving six months notice in writing to the party owning or occupying the adjoining inclosure, or to his agent, if such party is not a resident of the county, but this provision does not apply to outlets from farms into the highway, not more than two rods wide, the fences of which must be kept up by the parties. 4241.

SECTION 2. HEDGES.

Along road, how protected.—It is lawful for any person or persons to set or plant any hedge or live fence precisely on the line of any road or public highway, and also to place on the margin of such road a protection fence, not to occupy more than six feet of the margin or edge of such road, and supervisors and all other persons are required to permit such protection fence to remain there for seven years. The trustees of the township may grant permission, in writing, to the owner to continue such protection fence, any length of time which they may deem necessary.[1] 4252.

Size of hedge restricted.—The owner of any hedge-fence on a partition line, or along a public highway, is prohibited from permitting the hedge to remain of a greater height or width than six feet, for a longer period than six months, or the cutting from the same on the public highway for a greater length of time than ten days. 4253.

Penalties for violating foregoing provisions.—A person who violates the provisions of the foregoing section becomes liable to the person damaged in a sum not exceeding twenty cents per rod of the hedge; and if the same be along a public highway is liable to the trustees of the township in a sum not exceeding fifteen cents per rod of such hedge-fence, but before judgment is rendered it must appear by affidavit that

line fence, and was recognized and acquiesced in as such by the defendant. Ibid.

[1]Where a growing hedge, standing within the bounds of a highway, but leaving ample room for the public travel, which was not thereby incommoded or annoyed, was cut down by an individual not acting under official authority: *Held*, that the hedge was not such a nuisance as would justify any person in abating it, and that the owner of the fee might maintain an action for his damages sustained thereby. Phifer *v.* Cox, 21 Ohio St. 248.

the party complained against has had at least twenty days' notice before the beginning of the suit, from the party complaining, that such hedge is unlawful, and that unless cut to a proper height within twenty days, suit will be commenced for such violation. 4254.

No. 59. FORM OF NOTICE TO CUT HEDGE.

day of , 18 .

To Mr. :

You are hereby notified that your hedge-fence along the road is unlawful as to height and width, and that unless the same is cut down to the lawful height and width of not more than six feet within twenty days from date hereof suit will be commenced against you for such violation of the law.

Supervisor of Road District No. , *Township.*

Where and by whom action is to be brought.—All actions under the foregoing sections are required to be brought upon complaint of the person damaged, before a justice of the peace of the township in which the hedge is situated, or if the hedge be along a public highway the complaint is to be made by the supervisor of the road in whose district the hedge is situate. 4255.

It is the duty of owners of land adjacent to any partition fence when the land is improved on both sides to keep the brush, briers, thistles, and noxious weeds cut, in the corners and along the line of the same. 82 Laws, 181.

If the owner fails to keep the same cut, the owner of any land abutting on the fence may give him notice so to do, and if he fails to cut them within thirty days after such notice, may notify the township trustees, whose duty it then becomes to forthwith inspect the premises, and if they become satisfied there is just cause of complaint, may cause the weeds, etc., to be cut, either by letting the work to the lowest bidder or by private contract. 82 Laws, 181.

When the work is completed to their satisfaction the trustees may certify the expense thereof to the county auditor with a correct description of the lands, and the auditor must assess the amount on the duplicate against the lands to be collected as taxes, and when collected to be paid over to the township treasurer. 82 Laws, 181.

The trustees may anticipate the collection of the cost of said work, and draw their order on the treasurer for the amount, payable out of any township funds in his hands, and are entitled to one dollar each per day for services in this respect. 82 Laws, 181.

CHAPTER XI.

GASLIGHT AND WATER COMPANIES.

May be incorporated.—Gaslight and water companies, for the purpose of supplying gas for lighting the streets and public and private buildings of any township, or for the purpose of supplying the inhabitants of any township with water, may be incorporated under the general laws of this state, in the manner pointed out by the statute. 3550.

Powers of such companies.—The companies so incorporated have the power to manufacture and sell gas, and to supply water, in such quantities as may be necessary, and with the consent of the trustees, and under such reasonable regulations as they may prescribe, may, with the consent of the township trustees, lay conductors for conducting gas or water through the streets, lands, lanes, alleys, or squares of the township. 3550.

Trustees may contract for gas or water.—The trustees of any township in which any such gaslight or water company may be organized, are authorized to contract with such corporation for a supply of light or water for the streets, lands, lanes, squares, and public places of the township. 3551.

CHAPTER XII.

INFANTS.

May be committed to house of refuge.—Infants under sixteen years of age, who are destitute of a suitable home and of adequate means of obtaining an honest living, or who are in danger of being brought up to lead an idle and immoral life, may be committed to the guardianship of the directors of a house of refuge, by the trustees of any town-

ship within the county in which such house may be situated. 2050.

Statement to be furnished when commitment is executed.—When infants are so committed, the person executing the commitment must furnish to the directors of the house of refuge a true statement, in writing, of the age of such infant, and the reason for the commitment, and until it is furnished, the directors may decline to receive the infant. 2059.

Record of commitment.—Unless it be demanded by the infant, his parents, or guardian, no record of such commitment is to be made other than that such infant (naming him), who, on the day therein named, was of the age of years, having been brought before the trustees, and it having been ascertained that he was a suitable person to be committed to the discipline and instruction of the house of refuge, under the guardianship of the directors thereof, such infant was so committed, and delivered to the charge of such directors. 2060.

Township to pay expenses of infant.—The expenses of maintaining infants so committed by the trustees, are to be paid by the township. 2071

Commitment of, to children's home.—Children under the custody of parent, guardian, or next friend, and who, by reason of neglect, abuse, or from the moral depravity, habitual drunkenness, incapacity or unwillingness of such custodian to exercise proper care or discipline over them, are being brought up to lead idle, vagrant, or criminal lives, may, if the trustees of the township in which they have a legal settlement, after a careful and impartial investigation of the condition and facts, as they exist, deem it manifestly requisite for the future welfare of such children, and for the benefit and protection of society, be committed to the guardianship of the trustees of a county or district children's home. 945.

Commitment in counties having no children's home.—The trustees of townships in counties in which no children's

home or other similar institution is located, and adjoining a county or district in which there is such a home, may send to said home children for whom they have to provide, if the trustees of the home can receive them without detriment to children of their own county or district, and the cost of maintaining these children in such home can not be greater than the per capita cost of suitably providing for and maintaining the children of the county or district in the home to which they are sent. 79 Ohio Laws, 58.

CHAPTER XIII.

INTOXICATING LIQUORS.

Notice not to sell may be filed with township clerk.—Any husband, wife, child, parent, guardian, or other interested person liable to be injured by any sale of intoxicating liquors to any person, and desiring to prevent the sale of intoxicating liquors to such person, may file with the township clerk in the township wherein such liquors may be sold, notice to all liquor dealers not to sell to such person any intoxicating liquors from and after ten days from the date of filing such notice. 4358.

Record of notice.—The township clerk is required to enter the notice in a book to be kept for that purpose, which book is to be open for the inspection of all persons interterested, and any notice entered therein is required to be erased and obliterated so as not to be legible, upon demand of the person by whom it was filed, and thereafter the notice is at an end. 4359.

Penalty for failure to record.—Any clerk failing or refusing to make record of notice as above provided, becomes liable to a fine of not more than twenty-five nor less than five dollars, and to a forfeiture of his office. 4360.

For the law authorizing the prohibition of liquor selling in townships, see Appendix, p. 384.

CHAPTER XIV.

SELECTION OF JURORS.

Clerk of court to apportion among townships.—It is the duty of the clerk of the court of common pleas of each county, on the first Monday of September annually, to apportion the number of jurors among the townships in such county, according to the number of male inhabitants therein of the age of twenty-one years, and to make in writing a statement of the number of jurors so apportioned, and forthwith deliver the same to the sheriff. 5163.

Clerk to furnish list of jurors who have served.—It is the duty of the clerk of the court of common pleas to furnish the township trustees, at each state election, with a correct list, in alphabetical form, of the names of all the regular jurors from such township who have served in any court of record in said county during the past two years. 1252, as amended, 82 Laws, 166.

Sheriff to insert statement in his notice of election.—The sheriff, at the time of giving public notice of the general fall election, must insert a clause in his notification, giving the trustees of the respective townships notice of the number of persons to be returned as jurors therefrom. 5163.

Trustees to select jurors at fall election, and return list.—The trustees on the day of the fall election, must select of good and judicious persons, having the qualifications of electors, and not exempt by law from serving as jurors, and who have not served as regular jurors in any court of record in the county within two years last past, the number of persons designated in the sheriff's notice, to be returned as jurors from such township, make a list thereof, and deliver the same to the judge of election, whose duty it is to return the poll-book; and such judge must deliver the list to the clerk at the same time he returns to him the poll-book. It is made a misdemeanor, punishable by fine and imprisonment, for any person to attempt by request or suggestion to influence the trustees to appoint or not to appoint himself or any other person, and it is therefore improper for the trustees to listen to sugges-

tions or requests from any person when making up the jury list. 5164.[1]

Proceedings upon failure to return jury list.—If the trustees of any township fail to return the names of jurors, as required by law, the clerk of the court, on ascertaining the fact, must immediately notify the trustees, and they are thereupon required to meet and select and return to the clerk, without delay, the requisite number of names, and the names so returned are to be placed in the box as if returned with the poll-book. 5165.[2]

When the number of jurors is insufficient.—Whenever it appears that there is not a sufficient number of jurors, it is the duty of the clerk of the court, when so ordered, to apportion the number determined by the court to be necessary, among the several townships of the county, in the same manner as at the fall election, and after making such apportionment, to cause a statement in writing of the number of jurors required of each township, to be delivered to the sheriff of the county, whose duty it is to forthwith serve the same upon the trustees of the towhship, and return it, as a summons is served and returned. 5166.[3]

Trustees to select jurors, and return list.—The trustees, upon receipt of such statement, must forthwith select good and judicious persons, having the qualifications of electors, and having the other qualifications, and not exempted, as herein set forth, to the number required, and transmit a list of the persons so selected to the clerk of the court. 5166.[2]

Persons exempt from jury duty.—Any person who serves as a juror, grand or petit, or both, for three weeks in any year, is exempt from further service during the balance of the year, and the trustees can not put the name of any one on the list who has served as a regular juror in a court of record within two years last past. Public officers, clergymen and priests, physicians, attorneys-at-law, members of the police force, or firemen employed by a municipal corporation, acting members of volunteer companies for the extinguishment of fires, organized under and subject to the control of a municipal corporation, and persons who serve as active members of such companies for five consecutive years, are exempt from service on juries. 5179, 5180, 5164.[3]

[1]The fact that township trustees caused one of their number to be returned as grand juror does not disqualify him from serving as such. Koch *v.* State, 32 Ohio St. 353. 79 Ohio Laws, 18.

[2]As amended, 84 Laws, 41.

[3]As amended, 82 Laws, 166.

over, according to law, all moneys which may come into his hands by virtue of his said commission, and that he will faithfully perform every ministerial act that is enjoined upon him by law.[1] 579.

No. 61 Form of Justice's Bond.

Know all men by these presents, that we, , as principal, and , as sureties, are held and firmly bound unto the State of Ohio, in the sum of dollars, to be paid to the state aforesaid, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents.

In testimony whereof, we have hereunto set our hands, this day of , A. D. eighteen hundred and .

The condition of the above obligation is such that—

Whereas, the said has been duly elected and qualified as justice of the peace of township, in county, and State of Ohio, for the term of three years from the day of April, A. D. 18 , and until his successor is elected, or appointed, and qualified.

Now, if the said shall well and truly pay over, according to law, all moneys which come into his hands by virtue of his commission, and if he shall also faithfully perform every ministerial act that is enjoined upon him by law, then this obligation will be void; otherwise, it will be and remain in full force and effect.

[1] An approval of an official bond of justice of the peace, signed by two trustees at the same date, if nothing appears to the contrary, will be presumed to have been done at a meeting of the trustees, and such approval will be a sufficient compliance with the statute. Place *v.* Taylor, 22 Ohio St. 317.

A condition in such bond that the justice "shall well and truly discharge the duties of justice of the peace, according to law," is a substantial compliance with the statute. Ib

The above bond is approved by us:

——— ———,
——— ———,
——— ———,
Trustees of said Township.

No. 62. FORM OF JUSTICE'S OFFICAL OATH.

The State of Ohio, *County, ss.:*

Before me, , clerk of the court of common pleas of said county, personally came , who, being duly sworn according to law, says that he will support the constitution of the United States and the constitution of the State of Ohio; and that he will faithfully discharge his duties as justice of the peace of township, county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

——— ———,

Sworn to before me, and signed in my presence, on this day of , A. D. 18 .

——— ———,
Clerk as aforesaid.[1]

Oath to be certified to clerk of court, and record made.—If the foregoing oath be not taken before the clerk of the

[1] When an official bond is tendered to the township trustees in the sum prescribed, their acceptance without objection is sufficient evidence of approval to entitle the officer to proceed in the discharge of his office. So if it be delivered to the city council, and no objection taken within the time limited, and no action taken in ordering a new election, it must be considered approved, and a formal approval at a subsequent time can not affect intermediate acts. Royer *v.* Pugh, 1 D. 443.

It is of no importance that the personal representative is not named in a bond. The death of a party neither adds to nor takes from the obligations he may have assumed, and the necessary legal incidents that the law attaches to the undertakings of parties, need never be expressed. Peabody *v.* State, 4 Ohio St. 387.

number of justices of the peace is ordered, it is the duty of the trustees to give notice and hold an election for such justice or justices, according to foregoing provisions. 568.

How number of justices diminished.—The probate court may, in like manner, decrease the number of justices; but no justice can be deprived of his commission until the expiration of the term for which he was elected. 568.

When part of township is attached to another township.—If a part of a township be attached to another township, the justices of the peace residing in the part so attached, are to perform all the duties of their offices in the township to which they are attached, the same as if they had been elected therein. 568.

Contest of election; proceedings when vacancy results.—In case of a contest of the election of a justice of the peace, in which it is decided that there is a vacancy in such office, the judge of the probate court must, within three days after the rendering of the decision, transmit a copy thereof to the trustees of the township, or to the clerk of the township, if there are no trustees, who must forthwith give notice to fill the vacancy, as in other cases. 575.[1]

Costs of contest, who to pay, and how.—If the contestor fails to set aside the election, he must pay the costs; but if the election is set aside, the township must pay the same, and the trustees are required to issue their order on the township treasurer for the payment thereof, upon receipt of a certified bill of the costs from the judge or justice before whom the contest was heard. 578.

Clerk to give notice of resignation or expiration of commission.—The clerk of the township, within three days after he receives notice from a justice of his resignation, and six months prior to the expiration of the commission of each justice, must give written notice to the trustees of the resignation, or the expiration of the commission. It is the duty of any justice, when commissioned, or within thirty days thereafter, to transmit the date of his commission to

[1]As amended, 84 Laws, 44.

the clerk of the township, who is required to make an entry thereof in a book to be by him provided for that purpose. When the trustees receive notice of the resignation or expiration of the term of a justice of the peace, it is their duty to notify the electors of the township to elect another at the next regular spring or fall election, and they may hold an election before the vacancy actually happens. 570, 581.

When corporate limits become co-extensive with township.—When the corporate limits of a city or village become co-extensive with a township, and when the township has been merged in a city or village, the corporate existence of the township continues to exist for the purpose of electing justices and constables; and they are elected therein at the times and in the manner as in townships, and voted for on the same piece of paper; but in cities of the second grade of the first class, and in all cities of the second class, the corporate limits of which are co-extensive with the township, justices of the peace and constables are to be voted for on the same ticket with city officers. 1719.

Term of office.—The term of office of justices of the peace is limited to three years.[1]

Oath of office.—Upon receipt of his commission from the governor, the justice elect must take the oath or affirmation of office before the clerk of the court of common pleas of the county, or a justice of the peace thereof, and failure or refusal to take the oath creates a vacancy in the office. 579.

Bond of justice of the peace.—Within ten days after taking the official oath, and before he is authorized to discharge any of the duties of his office, the justice elect must give a bond, to be approved by the trustees of the township, payable to the State of Ohio, with at least two sufficient securities, in a penalty of not less than one thousand nor more than five thousand dollars, at the discretion of the trustees, conditioned that said justice shall well and truly pay

[1] Constitution, art. 4, § 19.

over, according to law, all moneys which may come into his hands by virtue of his said commission, and that he will faithfully perform every ministerial act that is enjoined upon him by law.[1] 579.

No. 61 FORM OF JUSTICE'S BOND.

Know all men by these presents, that we, , as principal, and , as sureties, are held and firmly bound unto the State of Ohio, in the sum of dollars, to be paid to the state aforesaid, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents.

In testimony whereof, we have hereunto set our hands, this day of , A. D. eighteen hundred and .

The condition of the above obligation is such that—

Whereas, the said has been duly elected and qualified as justice of the peace of township, in county, and State of Ohio, for the term of three years from the day of April, A. D. 18 , and until his successor is elected, or appointed, and qualified.

Now, if the said shall well and truly pay over, according to law, all moneys which come into his hands by virtue of his commission, and if he shall also faithfully perform every ministerial act that is enjoined upon him by law, then this obligation will be void; otherwise, it will be and remain in full force and effect.

____ _____
____ _____
____ _____

[1] An approval of an official bond of justice of the peace, signed by two trustees at the same date, if nothing appears to the contrary, will be presumed to have been done at a meeting of the trustees, and such approval will be a sufficient compliance with the statute. Place *v.* Taylor, 22 Ohio St. 317.

A condition in such bond that the justice "shall well and truly discharge the duties of justice of the peace, according to law," is a substantial compliance with the statute. Ib

The above bond is approved by us:

——— ———,
——— ———,
——— ———,
Trustees of said Township.

No. 62. FORM OF JUSTICE'S OFFICAL OATH.

The State of Ohio, *County, ss.:*

Before me, , clerk of the court of common pleas of said county, personally came , who, being duly sworn according to law, says that he will support the constitution of the United States and the constitution of the State of Ohio; and that he will faithfully discharge his duties as justice of the peace of township, county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

——— ———,

Sworn to before me, and signed in my presence, on this day of , A. D. 18 .

——— ———,
Clerk as aforesaid.[1]

Oath to be certified to clerk of court, and record made.—If the foregoing oath be not taken before the clerk of the

[1] When an official bond is tendered to the township trustees in the sum prescribed, their acceptance without objection is sufficient evidence of approval to entitle the officer to proceed in the discharge of his office. So if it be delivered to the city council, and no objection taken within the time limited, and no action taken in ordering a new election, it must be considered approved, and a formal approval at a subsequent time can not affect intermediate acts. Royer *v.* Pugh, 1 D. 443.

It is of no importance that the personal representative is not named in a bond. The death of a party neither adds to nor takes from the obligations he may have assumed, and the necessary legal incidents that the law attaches to the undertakings of parties, need never be expressed. Peabody *v.* State, 4 Ohio St 387.

court of common pleas, it must be certified to him as above within ten days, and in either case he is to make a record of it, in a book provided for that purpose. 579.

Where official bond deposited.—Before being filed, the bond must be recorded by the township clerk in a book kept for the purpose, after which it is to be deposited with the township treasurer, unless the treasurer should be the justice elect, in which case it is to be deposited with the township clerk. 579, 1506.

In case of refusal to give bond.—If the justice refuse or neglect to give bond, the trustees must treat the office as vacant, and give notice of a new election. 579.

Suit may be brouyht on bond, when.—Any person injured by the neglect or refusal of the justice, may bring suit on the bond and recover the amount he is entitled to by reason of the delinquency.[1] 4994.

Additional security, when and how required.—Whenever, in the opinion of the trustees, the security on the bond of a justice is insufficient for any reason, they are to give notice to the justice, in writing, that he is required, within ten days, to give additional security, to the satisfaction of such trustees; and no neglect or refusal by him to enter into a new bond, with security as required by law, the office is to be deemed vacant, and the trustees must give notice of a new election. See *ante*, Chapter IV., "Bonds."[2] 580.

[1] The sureties on the official bond of a justice of the peace, are liable, upon failure of his executrix after his death to pay over, upon demand, moneys that came into his hands, officially, during his term of office. Peabody *v.* The State etc., 4 Ohio St. 387.

The only way in which persons injured by the official misconduct of a justice of the peace can have redress by action in their own names on his official bond, is by a joint suit against all the obligors in the bond. Auker *v.* Adams, 23 Ohio St. 543.

[2] A justice of the peace being required by the township trustees to give other security, caused certain persons to subscribe their names to his official bond, with no seals attached, and without their names being inserted in the body of the instrument. *Held*, that this was not giving other security, and that

Resignation, to whom made, and notice of.—The resignation of a justice of the peace is to be made to the clerk of the court of common pleas, and the justice must at the same time give notice thereof to the clerk of the township. 570.

Where there are no trustees.—If there are no trustees in a township, it is the duty of the township clerk to give the required notice of an election. 571.

Docket, how furnished.—It is the duty of trustees to furnish each justice with a suitable book, to be used as a docket. 594.

Successor, how designated.—When two or more justices are equally entitled to be deemed the successor in office of a justice, the trustees of a township must designate which is to be deemed the successor of the outgoing justice, and must enter a certificate, in the last docket of the justice going out of office, of their determination, before the same is delivered to such successor. 600.

Criminal docket, how disposed of.—Every justice of the peace, in case of his resignation, removal, or the expiration of his term of office without a re-election—or his personal representatives, in case of his death—must deposit his criminal docket with his successor in office, or if there be no successor, then with the clerk of the township to be delivered to such other justice of the peace of the township as the trustees may designate; and with the docket he is required to deliver all such dockets of predecessors held by him, and all papers pertaining to causes undisposed of 612.

the obligation of the original sureties remained in full force against them. Stevens *v.* Allmen, 19 Ohio St. 485.

The justice of the peace holds money received by him in his official capacity in trust for the creditor, and is bound to keep it safely. He has no right to mingle the money with his own; but he has the right to place the money on special deposit, to be safely kept until called for by the creditor. 4 Ohio St. 387.

CHAPTER XVI.

LIBRARIES.

Vote as to, when to be taken.—The trustees of any township in which is situated an incorporated village, having a population of not more than one thousand, on the petition of twenty electors thereof, must submit to the electors of such township, at some general election, in April or October, the question whether there shall be a public library established therein, for the use and benefit of the citizens. 1476.

Notice, how given.—Before such question can be submitted, four weeks' public notice of the intention to do so must be given in some newspaper of general circulation in the county. 1476.

No. 63. Form of Notice as to Library.

To the qualified electors of Township, County, Ohio:

You are hereby notified that, at the election to be held on the day of April (*or*, October), the question whether there shall be a public library established in said township, for the use and benefit of the citizens thereof, will be submitted to you. Those voting in favor of such library will place upon their ballots the words, "Public Library—Yes," and those voting against the same, the words, "Public Library—No"

(Date.) (Signed.) ——— ———
——— ———
——— ———

——— ——— *Trustees of Township*
Clerk of Township.

Tax may be levied for, when.—If a majority of the voters at such election vote in favor of the library, the trustees are authorized annually to levy a tax of not more than one-tenth of one mill on the dollar, upon all the taxable property in the township, to be collected as other taxes and applied to the establishment and maintenance of a library, and the procuring of a room or rooms for the same. 1476.

Trustees of library to be appointed.—It is the duty of the township trustees to appoint three trustees of the library, when established, and confer upon them such authority as may be necessary to render the library so established of public utility; and the same is required to be conducted and cared for under such rules and regulations as the library trustees may prescribe. 1477.

School library-books may be placed in such library.—Any township so establishing a library has authority, by and with the consent of the local boards of education, or other school officers having the same in charge, to place in such library the books of the Ohio School Library, subject at all times to the call of said boards of education or school officers. 1478.

CHAPTER XVII.

MORTGAGES AND BILLS OF SALE OF PERSONAL PROPERTY.

Void unless deposited with township clerk.—Every mortgage or conveyance intended to operate as a mortgage of goods and chattels, unless accompanied by an immediate delivery, and followed by an actual and continued change of possession of things mortgaged,[1] is absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage, or a true copy thereof, is forthwith deposited with the clerk of the township where the mortgagor resides, at the time of the execution of the same. 4050. 4151.

Where deposited when mortgagor is non-resident.—In case the mortgagor is not a resident of the state, the mortgage must be deposited with the clerk of the township where

[1] The act in relation to chattel mortgages, as amended May 7, 1869, requires a mortgage given to indemnify the mortgagee against a liability as surety for the mortgagor, to have entered thereon a true statement of such liability, and that the instrument was taken in good faith to indemnify against any loss resulting therefrom; and the omission of such statement renders the mortgage void as against creditors of the mortgagor. Hanes *v.* Tiffany, 25 Ohio St. 549.

The affidavit required by the statute to be entered on a chattel mortgage, need not be made in any particular form. If the affidavit contains the requisite facts, the form in which they are stated is immaterial. Gardiner *v.* Parmlee, 31 Ohio St. 551.

Where the affidavit refers to matters contained in the mortgage, the matters thus referred to are to be regarded as part of the affidavit. Ibid.

the mortgaged property is at the time of the execution of the instrument; or, in case the mortgagor resides in a township where the office of the county recorder is kept, or in a township merged in a city or village in which the recorder's office is kept, or when he is a non-resident of the state, and the property is within such township, the mortgage must be filed with the county recorder. 4151.[1]

Statement must be entered on mortgage.—Before the filing of a chattel mortgage, the mortgagee, his agent or attorney, must enter thereon a true statement, in dollars and cents, of the amount of his claim, and that it is just and unpaid, which statement must be sworn to before the township clerk or other officer authorized to administer oaths. 4154.

Statement when mortgage is given to indemnify.—In case the instrument is given to indemnify the mortgagee against a liability as surety for the mortgagor, the mortgagee must enter thereon a true statement of such liability, and that said instrument was taken in good faith to indemnify against any loss that may result therefrom, which statement must also be duly sworn to before the township clerk or other proper officer. 4154.

No. 64. Form of Chattel Mortgage.

Know all men by these presents, that , in consideration of , to paid by , the receipt of which is hereby acknowledged, do hereby bargain, sell, and convey to the said and assigns, the goods and chattels described in the schedule hereunto annexed; to have and to hold the same to the use of the said , executors, administrators, and assigns.

And said mortgagor covenant that will insure the said property for not less than , and keep the same insured during the continuance of this mortgage, and if neglect, or fail to do so, then the mortgagee may insure the same at the expense of the mortgagor ; and in case of loss, if any, payment shall be made to the mortgagee for the use and purpose herein mentioned. Provided, nevertheless, that then this conveyance shall be void; otherwise to be and remain in full force.

The said mortgagor hereby covenant that on default

[1]As amended, 83 Laws, 72.

of payment, or any sale or attempt to sell said goods or chattels, or any part of them, or to remove them, or any part of them, from the county, or from their location, or upon any seizure of them, or any part of them, by process of law, or upon any failure to comply with the said provisions as to insurance, then the said mortgagee or assigns may take them into possession.

In witness whereof, the said ha hereunto set hand , this day of , A. D. eighteen hundred and

____ _____
____ _____
____ _____

Signed and acknowledged in presence of us:

____ _____
____ _____

STATEMENT OF CLAIM.

(When mortgage is given to secure money only.)

The State of Ohio, *County, ss:*

The undersigned makes solemn oath and says that he is the[1] within-named mortgagee; that the said mortgagee has a valid claim against the within-named mortgagor (*here name the mortgagor*), amounting to dollars and cents; that said claim is just and unpaid, and that the foregoing mortgage is given to secure the same.

(Deponent's signature,) ____ _____

Sworn to and subscribed before me, a in and for said county, this day of , A. D. 18 .

(Officer's signature,) ____ _____

[1] If the oath be made by the agent or attorney of the mortgagee, here say "*agent of the*," or, "*attorney of the*." If made by the mortgagee, leave the space blank.

STATEMENT OF CLAIM.

(When mortgage is given to indemnify mortgagee as surety.)

The State of Ohio, *County, ss:*

The undersigned makes solemn oath and says that he is the[1] within-named mortgagee; that on the day of , A. D. 18 , the said mortgagee became surety for the within-named mortgagor, , on a certain executed by , as principal, and the undersigned as security, dated (*here describe the note or other instrument on which the mortgagee is surety*); that he verily believes said claim is just and unpaid, and that the foregoing mortgage is taken in good faith to indemnify said mortgagee against any loss that may result to him from said suretyship.

(Deponent's signature,) —— ——

Sworn to and subscribed before me, a in and for said county, this day of , A. D. 18 .

(Officer's signature,) —— ——

SCHEDULE.

———— ————

Filing and indexing the mortgage.—The clerk receiving such instrument is required to indorse thereon the time of receiving it, and its consecutive number, and enter, in a book to be provided by the township trustees, the names of all the parties thereto, alphabetically arranged, with the number of the instrument, its date, the day of filing it, and the amount secured thereby; and this entry is required to be repeated alphabetically, under the name of every party thereto, and the instrument is to be deposited in his office for the inspection of all parties interested.[2] 4152.

[1] See note, page 149.

[2] A mortgage of personal property is "absolutely void" as to other creditors of the mortgagor who assert their rights against the property after its execution, and before it is deposited with the recorder or township clerk. Wilson *v.* Leslie, 20 Ohio, 161. Such a mortgage is not void in toto by reason of an omission

No. 65. FORM OF INDORSEMENT OF FILING AND REFILING CHATTEL MORTGAGE.

CHATTEL MORTGAGE.—Number . From To .

This mortgage received on the day of , 18 , at o'clock, M. Recorded, Vol. , Page . Filed.

This mortgage refiled on the day of , 18 , at o'clock, M.

Entry of refiling or cancellation.—When refiled or canceled, the date of such refiling or cancellation is required to be entered upon the margin of such record, opposite the original entry.[1] 4152.

As to leases and conditional sales of personal property.—When any personal property is sold, to be paid for in installments, or rented or hired, so as to become the property of the person purchasing, or hiring, when the installments or the hire paid shall amount to a certain sum, but the title to the property to remain in the seller or person hiring it out until the stipulated sum is paid, the last named condition is void as to subsequent purchases and mortgagees in good faith, unless evidenced by writing signed by the purchaser or hirer and also by a statement thereon under oath made by the person selling or hiring out, his agent or attorney, of the amount of the claim, or a true copy of the claim, with an affidavit that the same is a copy, deposited with the clerk of the township where the person signing the instrument resides at the time of the execution thereof, but if such person is not a resident of the state, then with the clerk of the township in which the property sold or hired is situated at the time of the execution of the instrument. 82 Laws, 238.

If the person executing the instrument resides in a township where the office of the county recorder is kept, or if he be a non-resident of the state and the property is within such township, the instrument must be filed with the county recorder. 82 Laws, 238.

The clerk upon receiving such instrument is required to proceed in all respects as he would with a chattel mortgage. 82 Laws, 238.

to make the deposit "forthwith," but becomes effective whenever it is deposited. And in case of a temporary withdrawal of the paper from the recorder's office, the mortgage will not be prejudiced by a levy made at the instance of another creditor. Ibid.

[1]A chattel mortgage can only be kept in force by successive filings from year to year. The lapse of a full year, without the renewal of the filing, will, at any time, render the instrument invalid as against creditors. Each refiling places it, for the purposes of notice, on the footing of a new mortgage. The lien of a chattel mortgage begins at the exact time it is filed, and runs to the corresponding day and hour of the following year. Seaman *v.* Eager, 16 Ohio St. 209.

No. 66. Form of Chattel Mortgage Index.

CHATTEL MORTGAGE INDEX, FOR TOWNSHIP, COUNTY, OHIO.

Names entered Alphabetically.	To or From.	Names.	No. of Mortgage.	Recorded.		Date of Mortgage.	Date of filing Mortgage.	Amount Secured.	Date of Refiling and of Cancellation.			
				Book.	Page.							
									Refiled,	18	Refiled,	18
									Refiled,	18	Canceled,	18
									Refiled,	18	Refiled,	18
									Refiled,	18	Canceled,	18
									Refiled,	18	Refiled,	18
									Refiled,	18	Canceled,	18
									Refiled,	18	Refiled,	18
									Refiled,	18	Canceled,	18
									Refiled,	18	Refiled.	18
									Refiled,	18	Canceled,	18
									Refiled,	18	Refiled,	18
									Refiled,	18	Canceled.	18
									Refiled,	18	Refiled,	18
									Refiled,	18	Canceled,	18
									Refiled,	18	Refiled,	18
									Refiled,	18	Canceled,	18
									Refiled,	18	Refiled,	18
									Refiled,	18	Canceled,	18

Refiling of mortgage.—A mortgage will become void, as against creditors, subsequent mortgagees, and purchasers, after the expiration of one year from the filing thereof, unless within the thirty days next preceding the expiration of the year, a true copy of the same, together with a statement duly sworn to, showing the interest of the mortgagee in the property at that time, is filed in the office of the clerk of the township where the original was filed. A refiling of the original mortgage, with the proper and requisite indorsements, has been held sufficient by the Supreme Court.[1] 4155.

No. 67. Form of Statement on Refiled Mortgage.

The State of Ohio, *County, ss:*

The undersigned, , makes solemn oath and says that, by virtue of the within mortgage, he has just and lawful interest as mortgagee in the property described in said mortgage,[2] which now amounts (principal and interest) to dollars and cents; that he verily believes said amount is just and unpaid, and that said interest in said property remains unimpaired to secure said sum, with the interest and costs that may accrue, according to the terms mentioned in said mortgage.

(Deponent's signature,) . —— ——

Sworn to and subscribed before me, a in and for said county, this day of , A. D. 18 .

(Officer's signature,) —— ——

Record of chattel mortgage.—If the party depositing the instrument desires to have it recorded, the clerk is required to record the same in a book to be provided by the township trustees, and also to enter upon the margin of the record, when the instrument is refiled, any affidavit, statement,

[1] Paine *v.* Mason, 7 Ohio St. 198.

[2] If the mortgage is given to indemnify surety, here insert "because of his liability as surety, as set forth in said mortgage." If to secure money, leave this blank.

or credit placed thereon after it was recorded, and where it has been satisfied the holder must forthwith notify the clerk whose duty it is, without delay, to make the cancellation and satisfaction upon the margin of the record without charge therefor. 4153.

Deposited with the recorder, when.—In townships in which the office of the recorder of the county is kept, chattel mortgages must be deposited with the recorder, and he is entitled to perform the same duties and receive the same fees, with reference to such mortgages, as the township clerk. 4151.

Certified copies.—A copy of such instrument with the statement, if any there be, so filed, with the indorsements thereon, or of the record thereof, will be received in evidence, but only of the fact that the instrument was so filed and indorsed; and the original indorsement by the clerk, will be received as evidence only of the facts stated in such indorsement. A certified copy of the record of any such instrument will be received in all courts as *prima facie* evidence of the existence of such instrument, and as conclusive evidence of the existence of such record. 4156.[1]

Fees of clerk.—For services about chattel mortgages, the clerk is entitled to receive the following fees: For filing each instrument or copy, six cents; for searching each paper, six cents; for making the entries upon the filing of an instrument, six cents for each party thereto; for recording such instrument, ten cents per hundred words; for recording an affidavit, credit, or statement, added to an instrument between the time of its record and refiling, twenty-five cents; and the like fees for certified copies of such instrument, or copies, as are allowed by law to county recorders for like services, to wit, twelve cents per hundred words. 4157, 1157.

[1] 77 Ohio L. 57, and 83 Laws, 206.

For stallion keeper's lien, see Appendix, p. 386.

CHAPTER XVIII.

ORIGINAL SURVEYED TOWNSHIPS.

SECTION 1. ORGANIZATION OF.

Election of Officers.—In any original surveyed township of five or six miles square, or fractional townships, wherein there are either the reserved sections twenty-nine or sixteen, or where section sixteen has been disposed of by Congress, and any other section granted in lieu thereof, whether such section be situate within or without said original township, and in all other fractional townships which by law are entitled to a section or part of a section for school purposes, the electors, if there be four or more of them within such township, are authorized to apply to the county commissioners for the organization and incorporation of such original township or fractional township. 1366.

Notice of first election. When the inhabitants of any surveyed or fractional township make, upon such application, it appear, to the satisfaction of the commissioners of the county, that there are four or more electors inhabiting such township, the commissioners must cause a written notice to be set up, in at least three of the most public places of the township, requiring an election to be held therein for the purpose of electing three trustees and one treasurer, and giving fifteen days notice of the time and place of holding the election, which should be held as near the center of the township as circumstances will admit, and must be conducted according to the laws regulating township elections, and on the same day, except that when such township lies in more than one township or county, the election must be held on the first Monday of May. (See *ante*, Chapter IX., on "Elections.") 1367.[1]

The trustees of such township are constituted a body corporate, with power to contract and be contracted with, sue

[1]As amended, 82 Laws, 256, and 1368 as amended, 88 Laws, 112.

and be sued, and to take charge of such section, sections, or parts of section, and to manage the same according to the best interests thereof. 1368.[1]

Lessees ineligible.—No person residing on, or holding a lease of or interest in any such reserved sections, is eligible to the office of trustee or treasurer. 1372.

Oath of trustee and treasurer.—The trustees and treasurer must each of them take an oath or affirmation before a justice of the peace, to discharge with fidelity, the duties of their respective offices. 1403.

Treasurer's bond.—The treasurer is required, before entering upon the duties of his office, to give bond, with good security, to the acceptance of the trustees, in the penalty of not less than five hundred dollars, payable to the State of Ohio, for the use of the proper township, conditioned that he shall faithfully discharge the duties of his office, and pay over all moneys which may come into his hands by virtue of the same. The bond must be filed and remain with the trustees. 1403.

No. 68. Form of Treasurer's Bond.

Know all men by these presents, that we, , as principal, and , as sureties, are held and firmly bound unto the State of Ohio in the penal sum of dollars, to the payment of which, well and truly to be made, we do hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our hands, this day of , 18. .

The condition of the foregoing obligation is such, that, whereas, the said was, on the day of 18 , duly elected treasurer of the original surveyed township No. of range , of the purchase, (*or*, reservation or

[1]As amended, 87 Laws, 112. Suits by trustees of original surveyed townships should be brought in the name of the corporation. Wilson *v.* Trustees of No. 16, 8 Ohio, 175.

[2]As amended, 82 Laws, 256.

survey), to serve for three years from said date, and until his successors in office are duly elected and qualified.

Now, therefore, if the said shall faithfully discharge the duties of the said office, and pay over all moneys which may come to his hands by virtue of the same, then the foregoing obligation shall be void; otherwise to remain in full force and effect.

____ _____

____ _____

____ _____

Executed in presence of us.

_____ ____

_____ ____

The following forms of approval and official oath may be indorsed upon the bond:

No. 69. FORM OF APPROVAL.

The within bond, filed with and accepted by us, this day of , 18 .

____ _____

____ _____

____ _____

Trustees of Original Surveyed Township, No. , Range .

No. 70. FORM OF OFFICIAL OATH.

, being duly sworn, says that he will support the constitution of the United States, the constitution of the State of Ohio, and will faithfully discharge the duties of his office as treasurer of original surveyed township, No. , range , of the (purchase, district, reservation, *or* grant) during his continuance therein.

(Affiant's signature.) ____ _____

Sworn to before me, and subscribed in my presence this day of , 18 .

(Official signature,) ____ _____

Appointment of a clerk—Pay of clerk and trustees.—When organized, the trustees must appoint a clerk, who may or may not be one of their own body. The trustees and clerk are entitled to receive for services the same fees as are provided by law to be paid the trustees and clerk of civil townships for similar services, but if the clerk be one of the trustees he can not be paid for acting in both capacities. 1373.[1]

Term of office.—The trustees and treasurer hold office for one year, and until there successors are elected and qualified. 1369.

Notice of elections.—At least fifteen days previous to each annual election, the trustees must notify the electors of their respective townships of the time and place of holding the election by notices posted in five or more of the public places of the original surveyed township; and if the trustees fail or refuse to give such notice, any elector of the township may, at any time thereafter, give the requisite notice and cause the election to be held. The elections are to be conducted in the same manner and on the same day as elections in civil townships, except that in any original surveyed township lying in more than one township or county, the election is to held on the first Monday of May. The place of election to be as near the center of the township as can be. (See *ante*, Chapter IX, "Elections.") 1368[2] 1369.

Vacancies in office.—Any vacancy in the office of trustee or treasurer must be filled by the trustees, and the person chosen by them to fill the vacancy may continue in office until the next annual election, and until his successor is elected and qualified. 1370.

Auditor to appoint officers in certain cases.—Whenever it may come to the knowledge of any county auditor that the electors of any original surveyed township in the county have failed to apply to the county commissioners for organization for one year after such application is authorized, or if the trustees elected fail to qualify and perform the duties required of them by law, it is the duty of such auditor to appoint three judicious persons, electors of that township, to act as such trustees, and one to act as treasurer; but such appointees must be of persons not residing on or holding any lease of the reserved lands. 1371.

Term of office, and duties of appointed officers.—The officers so appointed qualify themselves in the same manner, have the same powers, and perform the same duties as if elected, and hold office for one year, and until their successors are duly qualified. 1371.

When township is divided by county lines.—Every such township or fractional township, which has a county line running through

[1]As amended, 82 Laws, 256.

[2]As amended, 87 Laws, 112.

the same, is to be considered, as respects either of such sections, as though it was not so divided, and the commissioners and auditor of the county in which said sections lie, have the same power in respect thereof as if the township was wholly within such county, and if such sections lie in different counties, or part in one and part in another, then the officers of the county in which the application is first made for incorporation are vested with exclusive jurisdiction. 1374.

Penalties for non-performance of duty.—Any trustee or treasurer elected or appointed, as aforesaid, who fails to qualify, or having qualified, fails to perform all the duties imposed on him, forfeits a sum not to exceed fifty nor less than five dollars, to be recovered in a civil action in the name of the state, to be instituted and prosecuted by any of the trustees or the treasurer, and the money when collected is required to be paid into the county treasury for the use of the schools of such township, but no person can be required to serve as trustee or treasurer for more than three years in any consecutive nine years. 1375.

SECTION 2. LEASES AND RENTS OF RESERVED LANDS.

Laying out and leasing lands.—The trustees may employ a surveyor to assist them, and may lay out the lands into lots of not less than eighty acres, and not more than a quarter of a section, and they are empowered to lease out the section or sections (except such as may be provided for by special act), after giving at least thirty days' notice, by advertisement, set up in four of the most public places of the township, mentioning the time and place when proposals will be received, and when they will meet te execute the lease, always giving a preference to those who, in their opinion, make the most advantageous proposals.[1] The trustees may require the lessees to give notes for the rents, with security to be approved by them. 1404.[2]

Conditions of lease, etc.—Not more than one lot can be leased to one person, and the lessee must be bound not to waste or destroy

[1] S. & C. 1578.

Trustees of an original surveyed township can maintain an action for use and occupation, against persons who have held and used the township sections under a void lease. Wilson *v* Trustees, etc., 8 Ohio, 175.

[2] As amended, 82 Laws, 256.

sugar-trees, or other timber, further than is necessary for improving, and to make such improvements as the trustees may think proper. The trustees are to examine the premises, and see that they are left in good repair, and that the lease has been punctually complied with, and they are then required to proceed to relet the same in like manner as before, always giving preference to the original lessee, if he has complied with the terms of his former lease. 1405.

Length of term of leases.—Unimproved lots may be leased for any term not exceeding seven years, for making such improvements on the same as the trustees think advisable, or for a term not exceeding fourteen years, but in the latter case a cash rent must be reserved at least after the first seven years, and improved lots may be leased for any term not exceeding ten years, and all rents must be made payable on the first Monday of December, annually. The trustees may provide for improvements on the school lands in the lease or leases by which the same are rented, or they may make such improvements directly, but in the latter case, whenever the estimated cost of the improvements exceeds one hundred dollars, the trustees must advertise for bids for at least twenty days, by posting up notices in four of the most public places in the township, and let the contract to the lowest bidder, provided he gives a good and sufficient bond to the trustees, as trustees, conditioned for the honest and faithful performance of the improvement. 1406.[1]

Disposition of rents, etc.—The rents and profits must be applied to the special purpose for which they are intended. They are to be collected by the treasurer, and paid out only upon the order of the trustees. 1409,[1] 1410.

Treasurer to keep accounts, etc.—The treasurer must keep a book with fair and accurate entries of all moneys received and paid out, and must carefully file and preserve the vouchers for his disbursements, and such books and papers are at all times subject to the inspection of the trustees. The treasurer is entitled to retain for receiving, safe keeping, and paying out moneys belong- to the township, one per cent thereof as his fees. 1410.[1]

As to acknowledging and recording leases.—It is provided in the revised statutes that nothing therein contained shall be construed to affect the validity of any lease of school or ministerial

[1] As amended, 82 Laws, 257.

lands, for any term not exceeding ten years, or to require such lease to be attested, acknowledged, or recorded. From which it would appear that a lease of such lands for a period not exceeding ten years need not be acknowledged or recorded. The safer and better plan, however, will be to have such leases acknowledged and recorded in the usual manner.[1] 1412.

Proceedings when tenant fails to pay rent.—If the tenant fail to pay the rent or to comply with the terms of the lease, the treasurer must, when so directed by the trustees, bring suit in the name of the trustees before a court of competent jurisdiction. If the defendant can not be served with mesne process, or the money can not be made on execution, the trustees may re-enter upon the lands, and sell the delinquent's rights therein at public sale, but in that case they must give twenty days' notice of the time and place of the sale, by advertising in three public places, or by advertisement in some newspaper published in the county, subjecting the purchaser to the terms of delinquent's lease. In case there is more than enough realized from the sale to pay the rent, damages, and costs, the surplus must be paid over to the delinquent. Where secured notes have been taken for the rents, the trustees may, on failure of payment, order the treasurer to bring suit in their name on the notes, as they become due. 1409.[2]

Distribution of rents and profits.—After the payment of all just claims and necessary expenses, the trustees are required to meet at the office or residence of the treasurer within the township at least once a year, and oftener, if they deem it necessary, to make a dividend of any rents arising from such school lands, among the several school districts, or parts of districts, in proportion to the number of youth of school age in each district, or part of district, which dividend must be paid over by the treasurer. 1411.[2]

Copy of enumeration to be furnished.—The clerk of the board of education of any district which, in whole or in part, is composed of territory within the bounds of any original township incorporated as in this title provided, is required, on demand of the clerk of such township to furnish him a certified copy of the enumeration of youth within the school age residing within the bounds of such original township, in the several subdistricts of such school district, and the dividend is required to be made on the basis of the enumeration. 1412.

Lease of ministerial lands.—The trustees of every such town-

[1] A lease made under the provisions of the act to provide for leasing certain school lands, passed January 27, 1817 (15 Ohio L. 202), which act is silent as to the mode of executing leases, was held void, because it was not acknowledged before a judge, or justice of the peace, as required by the general act then in force. Atkinson *v.* Dailey, 2 Ohio, 213

[2] As amended, 82 Laws, 256.

ship must lease out the section, or fractional section twenty-nine, granted for religious purposes in the Ohio Company's and John Cleves Symmes' purchase (except such as have been heretofore leased, or are provided for by special acts), in lots of not less than eighty acres, nor more than one-quarter section, for the term of ninety-nine years, renewable forever, to be valued by three disinterested freeholders of the county, previous to its being leased; and the valuation must, in no case, be less than one dollar per acre; and all ministerial lands leased as aforesaid, are subject to a revaluation every fifteen years, without taking into account the improvements thereon, except at the first valuation; and six per cent. upon such valuation or revaluation is to be the rent required. 1407.

Enforcing collection of rents.—On failure of the lessee to pay rent, or comply with the terms of his lease, the treasurer must, when so directed by the trustees, bring a suit in a court of competent jurisdiction, in the name of the trustees; and to the judgment rendered in such action no stay of execution can be allowed; and on final process, if goods and chattels can not be found whereby collection can be made, or if mesne process can not be served, upon the return of the same, the trustees may re-enter upon the land and sell the right and title of the lessee, to satisfy the rent, damages, and costs.[1] In making such sale, the trustees must give twenty days' notice of the time and place when and where the lease will be sold, by advertising the same in three public places, or by advertisement inserted in some newspaper published within the county, subjecting the purchaser to the conditions contained in the lease of the de-

[1] The act incorporating the original surveyed townships authorizes the township trustees to lease the sections reserved for schools. Leases made by them, and recorded by the clerk of the township, are within the terms providing for a title recorded in some public office employed by the occupying-claimant law, and a party holding under color of such title was held entitled to pay for improvements when ejected. Lessee of Hart's Heirs v. Johnson, 6 Ohio, 538.

linquent, and in case the lease sells for more than the rent, damages, and costs, the surplus must be paid over to the delinquent. Where secured notes are taken in payment for the rents, the trustees may order the treasurer to bring suit in their name on such note or notes on failure of payment thereof, and to the judgment rendered in such action no stay of execution can be allowed. 1409.[1]

Distribution to religious societies.—Each denomination of religious societies, after giving themselves a name, must appoint an agent to produce to the trustees a sworn or affirmed certificate, containing a list of their names and numbers, as contained in the records of the society, and who are members at the time the certificate is produced. All members above the age of fifteen years are entitled to have their names enrolled, and the trustees must distribute the rents among the various denominations in proportion to their numbers residing in such township, without regard to the township in which they assemble for public worship. The money is required to be paid to the agent, and by him to be distributed among the societies of the denomination which he represents.[2] 1414.

When trustees of civil township may lease.—Whenever there is a reserved section in a surveyed township where there are not four electors, the trustees and treasurer of the civil township in which the surveyed township is situated are required to perform the duties of the officers of the original township. 1415.

Dividend of ministerial funds.—The trustees, when there is money in the hands of the treasurer, arising from the rents and profits of ministerial lands are required to meet at his office or residence on the fourth Monday of April.

[1] As amended, 85 Laws, 256.

[2] Before a society of Christians can be entitled to any part of the ministerial fund arising from the rents of section 29, they must have formed themselves into a society in the township in which the section is located. The State ex rel. *v.* Trustees of Sec. 29, etc., 11 Ohio. 24.

The agent appointed to receive the portion of the ministerial fund due any society, must be appointed by the society as a collective body, and not by the individual members thereof signing a paper purporting to constitute a person the agent of such society. Ibid.

annually, and make a dividend thereof to each religious society, as above set forth, and the money is thereupon required to be paid out by the treasurer according to the order of the trustees in making such dividend.[1] 1413.

Re-appraisement.—Whenever it becomes necessary, by the terms of any lease and by the law authorizing the leasing of any reserved lands, it is the duty of the trustees to apply to the court of common pleas, by petition, setting forth the facts showing the necessity for a re-appraisement, and to give at least twenty days' notice, in writing, to the lessees or assignees of the pendency of the petition. The court, on being satisfied of the truth of the petition, and that the notice has been properly given, must make an order appointing three disinterested citizens of the county to appraise the lands on oath. The appraisers are required to make their appraisement on actual view of the premises, and without reference to the improvements thereon, and within five days thereafter must make out a report of such appraisement, and cause it to be delivered to the township clerk, together with the order of the court, within twenty days from the date of their appointment. The court may make such order as to costs as may seem equitable and just.[2] 1408.

[1] As to beneficiaries of the fund for religious purposes, arising from the rent of section 29—*Held:* That persons having no system of religious faith, written or traditional, can not be deemed a denomination or sect; and that a society having no system of public worship, or religious services, as a sect or denomination, and being organized for the purpose of maintaining a library, and being in fact a library association merely, is not a religious society within the terms of the statute above mentioned. The State ex rel. *v.* Trustees of Tp. 9, etc., 7 Ohio St. 58.

[2] Where two leases of school lands vest, by assignment, in one person, the two tracts can not be appraised as one entire tract or farm—the trustees being entitled to the benefit of any enhanced value arising from the original severance, and the assignee to the benefit of any enhanced value arising from the two

Auditor to notify delinquent lessee.—Whenever it may come to the knowledge of the auditor that the lessee of any school or ministerial lands has failed to pay his rent, or that the trustees have failed to cause the re-appraisement to be made, he must immediately notify the lessee, in writing, of his delinquency, and unless the lessee or lessees make good the delinquency, within thirty days from the date of the notice, the auditor must give notice of the same to the trustees of the original surveyed township, and upon receipt of such notice, it is their duty to proceed at once to collect the rent or make the re-appraisement, according to law. 1417.

Errors of estimate in case of sale, how corrected.—In case of any sale of school or ministerial lands heretofore or hereafter made, where a mistake has been made in the calculation of the amount to be paid, or in the computation of interest, by any officer having charge of the same, it is the duty of the auditor to examine into the same and correct the errors, and any purchaser, upon being notified of such mistake, must immediately pay the sum remaining due, and in case of his failure to pay, the auditor must, in his own name, for the use of the township, institute a suit in the court of common pleas, against the purchaser, to recover such unpaid amount, and prosecute said action to a final judgment and execution; and if the mistake be by excess of payment, the auditor is required to make the correction by

lots having been united into one. Trustees, etc., *v.* Odlin, 8 Ohio St. 293.

The title to lands selected by the secretary of the treasury, under the act of Congress of May 20, 1826, for the support of schools within what is called the French Grant, is vested in the State of Ohio, in trust for that purpose.

A civil action for trespasses committed on the lands, while the title is so held, is not barred by the statute of limitations, if brought within four years after the authority given to commence such suit. The statute does not apply where the state is a trustee, and the beneficiaries have no right to sue. Green Tp. *v* Campbell, 16 Ohio St. 11.

paying out of the county treasury the amount unpaid, and charging the same to the state or township, as the case requires. 1440.

Certain informal leases made valid.—All leases of school lands made by the trustees of the original surveyed townships anterior to the first day of June, 1831, although not acknowledged before any officer authorized to take the acknowledgement of deeds are nevertheless valid, between the lessors and lessees, their grantees, heirs, and assigns, to the same extent and for the same purposes that they would have been had they been so acknowledged. 1416.[1]

SECTION 3. SALE OF SECTION SIXTEEN.

Vote to be taken.—Section sixteen, or other lands granted in lieu thereof, may be sold in the following manner: In case no vote has been taken, the trustees of the original surveyed township, must at least thirty days prior to the taking of such vote, cause not less than eight notices to be posted up in as many of the most public places of such township, notifying the legal voters thereof to meet at some convenient time and place, therein specified, and then and there cast their ballots for or against the sale of such lands. If the votes result in a refusal, the trustees may submit the question again after a lapse of a year. 1418, 1419.

No. 71. FORM OF NOTICE OF ELECTION.

The legal voters, resident in the original surveyed township, are hereby notified to meet at , in said township, on the day of , 18 , between the hours of and , and then and there cast their ballots for or against the sale of the lands granted by the Congress of the United States for school purposes, known as section sixteen.

(Date) (Signed,) ——— ———

——— ———

——— ———

Trustees of Original Surveyed Township

[1]As amended, 80 Laws, 218.

Manner of conducting election.—The trustees must preside at the taking of the ballots, and appoint two clerks to keep poll-books containing the names of the voters and the result of the ballot, which poll-books must be signed by the trustees and clerks. (For form of poll book, see *ante*, Chapter IX., "Elections.") 1420.

Poll-Book and affidavit to be filed with auditor.—If the ballot result in favor of the sale, the trustees must, within ten days after the election, deposit one of the poll-books with the auditor of the county, with a copy of the notice given, and the affidavit of one or more of the trustees, stating the manner of giving the notices, the time and place of putting up the same; and the auditor must cause the notice, affidavit, and poll-book to be copied into a book kept for that purpose, and when so recorded, the record is to be held proof of the facts therein stated. 1420.

No. 72. FORM OF AFFIDAVIT TO BE RETURNED TO AUDITOR.

The State of Ohio, County of , ss:

The affidavit of and , who, being duly sworn, say that they are trustees of original surveyed township, and that, on the day of , 18 , pursuant to an order duly made by said trustees, a copy of the following notice was conspicuously posted in more than eight of the most public places of said township, as follows, to wit: One of said notices was put up at ; another at ; another at (*and so on, stating all the places where notices were put.*) And that the election, the result of which appears from the accompanying poll-book, was duly held pursuant to such notice.

(Signed,) ——— ———
——— ———
——— ———

Trustees of Township.

Sworn to before me, and subscribed in my presence, this day of , 18 .

(Official Signature.) ——— ———
———

Petition to court of common pleas.—After the record has been made in the auditor's office, the trustees must file a petition in the court of common pleas of the county within which the lands, or the greater part of them, are situate, setting forth the giving of the notice, the taking of the ballot, the result of the same, the filing and record of the papers in the auditor's office, and asking the court to appoint three disinterested freeholders, not resident of the township where the lands are situated, to divide and value the same in money. 1421.

No. 73. Form of Petition.

The State of Ohio, *County, Court of Common Pleas:*

In the matter of the sale of section sixteen of original surveyed township. } Petition.

The undersigned petitioners respectfully represent that they are the trustees of the original surveyed township, known as ; that on the day of , 18 , they caused notices to be posted in more than eight of the most public places of said township, notifying the legal voters of said township to meet at the time and place therein specified, to cast their ballots for or against the sale of the lands hereinafter described; that, on the day and between the hours specified in said notice, the said voters of said township assembled at the place named in said notice, and did then and there cast ballots for the sale of said lands, and ballots against the sale thereof. And afterward, to wit, on the day of , 18 , your petitioners caused to be deposited, in the office of the auditor of the said county of , one of the poll-books of said election, with a copy of the said notice, and the affidavit of and , trustees of said township, stating the manner of giving said notices, and the time and place of putting up the same; and the said auditor thereupon duly recorded the same, and a copy of said record is hereto attached, marked "A," and made part hereof.

Wherefore, your petitioners pray that all those lands granted by the Congress of the United States for school purposes, known as section sixteen, and more fully described as follows, to wit (*here insert description by metes and bounds*), be divided and valued in money, and that the court appoint three disinterested freeholders, not residents of said township, to divide and value the same.

(Date,) (Signed,) ——— ———

——— ———

——— ———

Trustees.

Appointment of appraisers.—The court, upon being satisfied that the statements of the petition are true, is required to appoint three persons to divide and appraise the lands, according to the prayer of the petition. 1422.

No. 74. Form of Order Appointing Appraisers.

County Court of Common Pleas:

In the matter of the petition of the trustees of original surveyed township, to sell section sixteen.

This cause coming on to be heard upon the petition, testimony, and exhibits, and the court being satisfied that the statements contained in the petition are true, does hereby order and adjudge that and , and , disinterested freeholders of said county, and not residents of said township, be, and they are hereby appointed appraisers to divide and appraise the premises described in the petition.

Duties of appraisers.—The appraisers, after being first duly sworn, and taking to their aid, if they think necessary, the county surveyor, must proceed to divide the lands into parcels or tracts, such as, in their opinion, will be best for the sale thereof, and return, in writing, such divisions.

suitably numbered and described, to the court, with a just valuation of each division in money. 1422.

No. 75. Form of Appraisers' Oath and Report.

The State of Ohio, *County, ss:*

We, , and , and , do solemnly swear that we will well and faithfully divide and appraise the lands known as section sixteen, of original surveyed township, according to law, and to the best of our knowledge and ability.

(Signed,) ——— ———
——— ———
——— ———

Sworn to before me, and subscribed in my presence, this day of , 18 .

——— ———
———

County Court of Common Pleas:

In the matter of the petition of the trustees of original surveyed township, for the sale of section sixteen. } Appraisers' Report.

The undersigned, appraisers, appointed by the court to divide and appraise the lands described in the said petition, do hereby report that, having taken to their aid , the county surveyor, they divided and appraised said lands as follows, to wit: (*Here insert the tracts or parcels as surveyed, consecutively numbered, with a description by metes and bounds of each, and after the description of each, state the appraised value.*) That the said lands are, in the opinion of the undersigned, divided into such parcels or tracts, above set forth, as will be best for the sale thereof, and that the valuation of each separate division is a just valuation in money.

(Date.) (Signed,) ——— ———
——— ———
——— ———

Appraisers

Entry by the court.—On such return being made, and the court having examined the same and found all things regular, just, and fair, must certify such report, and order it to be entered of record, together with the petition and all the proceedings therein had. 1423.

No. 76. Form of Entry by the Court.

County Court of Common Pleas:

In the matter of the petition of the trustees of original surveyed township, for the sale of section sixteen. } Entry.

This cause coming on to be heard upon the petition, exhibits, and report of the appraisers and other proceedings had herein, and the court having examined the said petition, and all other proceedings in the cause, does hereby adjudge and certify that the same are in all things regular, just, and fair, and orders that all said proceedings, together with this entry, be entered upon the records of the court.

Record to be copied by auditor.—The trustees are then to cause a copy of the record of the proceedings in the court to be filed in the auditor's office, and the auditor is required to copy the same into the book containing the notice, affidavit, and poll-book, and immediately after them. 1423.

Notice of the sale.—After making the record, the auditor must forthwith give notice, in some newspaper of general circulation in the county, for five consecutive weeks before the day of sale, and at the same time post up copies of the notice in six of the most public places of the county, two of which must be in the township where the lands are situate, and one at the court-house, containing a description of the lands to be sold, the valuation thereof, the time when they will be offered at public auction at the door of the court-house, and stating that they will be sold at not less than their appraised value; that one-third of the purchase-money must be paid at the time of sale, and the balance in

two annual installments of equal amount, with interest thereon payable annually. 1424.

No. 77. Form of Notice of Sale.

Sale of School Lands of Original Surveyed Township.

Notice is hereby given that, on the day of , 18 , at o'clock A. M. (*or*, P. M.), I will offer for sale at public auction, at the door of the court-house in , the following described pieces or tracts of real estate (*here insert the descriptions and appraisements according to the return of the appraisers*), to be sold to the highest bidder, but at not less than the appraised value thereof, and upon the following terms, to wit, one-third of the purchase-money to be paid at the time of sale, and the balance in two annual installments of equal amounts, with interest thereon, payable annually.

(Date.) (Signed,) ——— ———

Auditor of County

The sale.—At the time and place specified in the notice, the auditor must offer the lands for sale to the highest bidder, at or over the amount of the appraisement, and upon the terms stated in the notice. If the principal value of the lands consists in the timber growing thereon, the auditor, when requested by the trustees or a majority of them, must cause the lands to be sold for cash. If the whole or any part of the lands remain unsold, the auditor may, upon the written request of the trustees, continue to offer them for sale, giving each time the same notice, and selling upon the same terms as at the first sale; but no sale can be made after the lapse of two years from the time of the appraisement. 1424,[1] 1425.

Re-appraisement.—The court of common pleas may, on petition from the trustees, setting forth the former appraisement and subsequent proceedings, and that two years have elapsed, and the land remains unsold, direct a new valuation to be made in the same manner as the original appraisement was made, unless such court be satisfied that the former appraisement is just and fair; in which case an entry to that effect must be made and certified to the auditor as before, and such entry will have the effect of a new appraisement. A re-appraisement may be had at any time after the original appraisement, by like petition and showing to the

[1]As amended, 81 Laws, 132.

satisfaction of the court that the property has decreased in value. 1426, 1425.[1]

Proceedings to procure surrender of lease.—In case the holder of any permanent lease, or lease for ninety-nine years, of school lands, desires to surrender the lease and purchase the fee of the lands, he may, with the consent of the trustees of the original township, file his petition in the court of common pleas of the county in which the largest portion of such lands are situated, setting forth a description of the lands, the date of his lease or his title, that he is desirous of surrendering the lease and becoming the owner of the premises in fee, and asking the court to appoint three disinterested freeholders of the county, not residents of the original township, to value the lands. 1427.

Orders by the court as to surrender.—The court, on being satisfied of the truth of the petition, must appoint the appraisers, whose duty it will be to proceed under oath to make a just valuation of the premises in money, without reference to the improvements made thereon under and by reason of the lease, and to return such valuation in writing to the court. If the court is satisfied that the valuation is just, an order must be made to confirm it, and that the petition and all the proceedings be recorded. 1427.

Vote to be taken as to surrender.—Before the trustees of the original township can consent to such surrender, they must cause a notice to be given and a vote to be taken by the electors of the township, in the same manner that elections are required to be held to determine as to the sale of school lands, as above set forth in this chapter; and if at such election a majority of the electors vote in favor of the surrender, then, and not otherwise, may they consent to the surrender. 1427.

Release, how executed.—Any such lessee, on producing to the county auditor, within one year after the making of the same, a certified copy of the petition, appraisement, and confirmation, must be permitted, by indorsement thereon, attested by the auditor, to release to the State of Ohio all

[1]As amended, 85 Laws, 141.

his interest, title, and claim in and to such lease, for the benefit of the township to which the same may belong—which copy of record and release is to be recorded by the auditor, in a book to be provided for that purpose. 1428.

Payment.—The purchaser of such lands at any auditor's sale, or the lessee executing his release as aforesaid, must each forthwith pay to the county treasurer one-third of the purchase money, or of the valuation, as the case may be, and take the treasurer's receipt therefor. 1429.[1]

Certificate by auditor.—The auditor, on receiving the treasurer's receipt for the first payment, must give the purchaser or lessee a certificate, containing the name of the purchaser or lessee, a description of the premises, the number, amount, and time of payment of subsequent installments, and that the purchaser or lessee, his heirs or assigns, on the punctual payment of the sums yet due, with annual interest up to the time of payment, shall be entitled to receive a final certificate from the auditor, if such lessee produce a certificate from the treasurer of the original township, or other proper officer, to the effect that all rents due on the premises have been paid up to the time of the surrender of the lease. 1429.

No. 78. Form of Auditor's Certificate.

This is to certify that did, on this the day of , 18 , at a sale by public auction, had pursuant to proceedings, under and by virtue of the statutes providing for the sale of lands granted by the Congress of the United States for school purposes, known as "section sixteen," purchase the premises hereinafter described; that the price, at which the same were sold to the said . , was the sum of dollars, the same being the highest and best bid therefor, payable in three installments, of the sum of dollars each—the first payable at the time of the sale, and the other two in one and two years from date hereof respectively, with interest thereon payable annually; that the said has this day delivered to me the

[1] Special provision as to the lands in township 11, R. 14, Ohio Company's purchase, is made by an act to be found in the Ohio Laws, vol. 83, p. 64, and the provisions of section 1429 are declared inapplicable to such lands.

receipt of the treasurer of this the county of , for the sum of dollars, being the first of said installments; and that said , his heirs or assigns, upon the punctual payment of the remainder of said installments, with annual interest up to the time of payment, shall be entitled to receive a final certificate from the undersigned, entitling him to a deed of the following described premises, to wit (*here insert description of the premises in full*).

In testimony whereof, I have hereunto set my hand and official seal, the day and year aforesaid.

——— ———

Auditor of County.

The foregoing form may be readily adapted to the case of the surrender of a lease.

Other payments.—Any person, wishing to pay money under the law, in part or full payment of such lands, must first obtain a certificate from the auditor of the amount due or to be paid; and on presentation of the same, the treasurer is authorized to receive the amount therein specified, and must give the person paying, a certificate directed to the auditor, of the payment of such sum of money, and the auditor, on presentation of the certificate, is required to give the person a receipt, credit him with the amount paid, and charge the treasurer with the same. 1430.

Report by county to state auditor.—The county auditor must keep an account with the treasurer of all sales and leases surrendered, and the moneys paid thereon by each purchaser or lessee, and make a report of the same to the state auditor, on the first day of February, May, August and November of each year, distinguishing between the amount paid in as principal and the amount paid in as interest. 1431.

Disposition of fund arising from sale.—From the time of the auditor's report, the state is liable to pay interest on all sums reported as principal; and the treasurer of state, on

receiving a certified copy of the account from the auditor of state, is authorized to draw such principal from the county treasurer. The amount reported as interest is to be retained in the county treasury, and apportioned to the several civil townships and parts of civil townships in the original surveyed township or fractional townships to which the lands belong. 1431.

Enforcing payment.—If any purchaser or lessee fail to pay within twelve months after any payment is due, the auditor must forthwith proceed to sell the lands, with all the improvements thereon, at the door of the court-house, to the highest and best bidder, in cash, having first given notice of the time and place of the sale, with a description of the lands, and stating the money due and to become due, by publishing the same in a newspaper of general circulation in the county, for six consecutive weeks before the day of sale. 1432.[1]

No. 79. Form of Notice of Sale.

Sale of School Lands.

Notice is hereby given that, on the day of 18 , at o'clock A. M. (*or* P. M.), I will offer for sale at public auction, at the door of the court-house, in , the following described real estate, viz. (*here insert description of the lands*), to be sold to the highest and best bidder, in cash, but not for less than the sum of dollars, the amount due and to become due thereon, by reason of the sale of said premises heretofore made, but not perfected.

(Date.) (Signed.) —— ——

Auditor of County.

Not to be sold for less than amount due; failure to sell.—At such sale no bid can be entertained for a sum which is not sufficient to pay all the purchase money due to the state, and all expenses incident to the sale; and in case the premises can not be sold for that amount, they revert to the state, in trust for the township, and may be sold in the

[1]Amended, 88 Laws, 321.

manner above set forth, as for the sale of lands not under permanent lease, and in any such case whether arising before or after the passage of the revised statutes of 1880, the auditor, in lieu of a sale of such land, may institute a suit against said purchaser or lessee, and all other parties who have or claim an interest in the land, in the court of common pleas of the county in which the land is situate, in his own name, for the use of the proper township, and prosecute the action to final judgment and execution. 1432.[1]

The auditor must prosecute the action to final judgment, and may have an order of sale, and have the premises sold with all improvements thereon as upon execution at law, and the sheriff's deed will convey to the grantee therein the legal title to the land, all the rights of the state, of the original township, and of the parties to the action. The auditor may also have an execution for any unsatisfied balance after such sale, but the balance must be recovered equally from all the lessees, their heirs or assigns, and no one is liable for more than his *pro rata* share thereof. The proceeds of the sale with costs and expenses must be paid by the sheriff to the county treasurer, and the sheriff must at the same time certify the fact of the sale to the county auditor, to whom sold, with a description of the land, the amount for which the same was sold, with a statement of the distribution of the same, and the auditor must report the same to the state auditor, in the manner shown on page 80. 1432.[1]

It is sufficient if the auditor allege in his petition the sale of the land, with a description thereof, and that there remains due and unpaid the amount claimed with interest, and he is not required to set forth any special matter or proceedings in connection with the sale, and the auditor's record kept according to law is made proof of the sale and of the validity thereof, and his record of the amount claimed to be due is

[1] As amended, 88 Laws, 321.

prima facie evidence of the correctness of the same, and none of the judgment debtors are entitled to any stay of execution or homestead exemption in such case. 1432*a*.[1]

Payment and deed on sale of forfeited lands.—In case the forfeited lands sell, except when sold under proceedings in civil action, the purchaser is to pay to the treasurer of the county the amount bid for the lands; and on producing to the auditor the treasurer's receipt for such payment, the auditor must give him a final certificate, stating the fact of such sale, the name of the purchaser, the description of the lands sold, the amount for which sold, the payment of the amount, and that the purchaser is entitled to receive from the State of Ohio a deed in fee simple for the premises, on producing the certificate to the proper officer. 1433.[2]

Final certificate.—When the purchaser or lessee, at a sale other than of forfeited lands, his heirs or assigns, has made payment in full, the auditor must give him a final certificate, containing, in addition to the first certificate, the fact of the payment in full, and that said person is entitled to receive from the State of Ohio a deed of the premises, in fee simple, on presentation of the certificate to the proper officer or officers. 1434.

No. 80. Form of Final Certificate.

This is to certify that did, on the day of , 18 , at a sale by public auction, had pursuant to proceedings under and by virtue of the statutes, providing for the sale of lands granted by the Congress of the United States for school purposes, known as "section sixteen," purchase the premises hereinafter described, for the sum of dollars, one-third of which sum was by him paid on the said day of sale, and the two remaining installments, with

[1] Enacted April 17, 1891. 88 Laws, 321.

[2] As amended, 88 Laws, 321.

interest thereon, payable annually, have since been paid in full by him, according to the terms of said sale; and that the said is entitled to receive from the State of Ohio a deed in fee simple for said premises, on presentation of this certificate to the proper officer or officers. Said premises are described as follows, to wit: (*Here insert description in full.*)

In testimony whereof, I have hereunto set my hand and official seal, this day of , 18 .

(Signed,) —— ——

Auditor of County.

Deed from the state.—The auditor of state, upon the filing of any such final certificate in his office, must make out a draft of a deed for the lands, and deliver the same, with the final certificate, to the governor of the state, whose duty it is to sign the deed, and cause the same to be sealed with the great seal of the state, and delivered to the grantee on demand. 1435.

Excess of money on delinquent sale to go to owner.—All excess of moneys made on any sale of delinquent lands, after paying the sums due, with interest and costs, must be paid on demand to the delinquent owner, his heirs or assigns, from the county treasury, on the order of the auditor, if the demand be made within one year from the time of sale, and if not so demanded, it must be paid into the state treasury; and unless demanded within one year after it has been paid into the state treasury, it must be applied to the same uses that the lands are subject to. 1436.

Fees.—The fees for services in and about such sales and surrenders are as follows: For petition, the same as are allowed for similar services in proceedings in partition. The auditor is entitled to one dollar and fifty cents on each sale made by him, fifty cents for each certificate, six cents for each receipt, to be paid by the purchaser, and the same fees for recording as are allowed county recorders, to be paid out of the first money paid in as interest or rents on such sale

or surrender. All printers' fees for advertising must be paid out of the county treasury, on the order of the auditor, and refunded out of the first money received on the sale, from interest or rents. In case of a petition by the trustees, the costs in court must be paid out of the county treasury, on the order of the auditor, and refunded out of the first money received from the sale as interest or rents. In case of a petition by a lessee, all costs must be paid by him. 1437.

Ministerial lands may be sold in the same manner.—The lands granted by Congress for religious purposes, known as section twenty-nine, may be sold, or the permanent leases thereto surrendered, in the same manner as school lands, and the proceedings must be the same as above set forth. 1438.

Money paid into the state treasury from the sale of section twenty-nine constitutes part of the irreducible debt of the state, of which the state auditor is required to keep an account with each original township, and the county auditor is required to draw his warrant for the amount of interest due each original township in the county, as certified by the state auditor, after the February settlement of each year. The money is to be distributed by the trustees in the manner provided for distributing the rents and profits of such lands. 86 Laws, 206.

As to certain townships in Ohio Company's purchase.—Sections 16 and 29, or lands granted in lieu of either, may be sold, or permanent leases thereto surrendered, as above set forth, in the following original surveyed townships of the Ohio Company's purchase, to wit: Township 8, in range 12; township 7, in range 13; township 11, in range 14; township 13, in range 15; and townships 8, 9, 10. 11, 12, and 13, in range 16; and any lessees of such lands may have the benefit of the law for the surrender of such leases, though their leases be for a less term than ninety-nine years. 1439.

The trustees of any original surveyed township owning land granted by Congress for the support of common schools, may make application to the county commissioners and file the petition and bond required by statute to secure the construction of a county ditch. 4450, as amended, 82 Laws, 96.

CHAPTER XIX.

THE RELIEF OF THE POOR.

SECTION 1. SETTLEMENT AND REMOVAL.

Relief when to be furnished.—The trustees are required to furnish support or relief, at the expense of the township, to all persons therein who may be in condition requiring the same, subject to the following conditions and limitations:[1] 1491.

[1] The legal settlement of a minor is in the township where his father resides, and by no act of his own can he, while a minor, obtain a legal settlement elsewhere. Jefferson Tp. *v.* Letart Tp., 3 Ohio, 100.

The mother of an infant pauper, settled in one township, does not change the infant's legal settlement by marrying a second husband, settled in another township, and there residing without the infant pauper. 5 Ohio, 316.

When a new township is formed, paupers having residence within its territorial limits are chargeable upon it, though before charged upon the entire township, from which it is taken, in whole or in part. Pike Tp. *v.* Union Tp., 5 Ohio, 528, overruled; Center Tp. *v.* Wills Tp., 7 Ohio, 172.

In order to gain a legal settlement in a township, the person must reside therein, continuously, openly, and notoriously, for the period of one year. Henrietta Tp. *v.* Brownhelm Tp., 9 Ohio, 76.

In order to obtain a settlement in a township, the fact of residence is not sufficient, unless attended with the intention, on the part of the resident, of making such township his place of abode. Henrietta Tp. *v.* Oxford Tp., 2 Ohio St. 32.

When a person has obtained a settlement in a township, that settlement is not lost by his residing in another township for a

Conditions of settlement.—Every person has obtained a legal settlement in any county of the state, in which he

year, if his residence in such township is attended with an intention of returning to the former township. Ibid.

If a person removes from this state to another, with the intention of remaining, and, while there, exercises the right of suffrage, and acquires a residence and settlement, his settlement in this state is lost, and his return will not revive it. He must obtain a new settlement, after his return, by a continuous residence of one year in some township of this state. Crane Tp. *v.* Antrim Tp., 12 Ohio St. 430.

If a man having no settlement in this state, marry a woman having such settlement, and abandon her before he acquires a new settlement, she will, if in need of relief, be entitled to receive it from the township where she was last legally settled prior to her marriage. Ibid.

The legal settlement of a minor child, member of his father's family, continues to be in the township where his father was last legally settled, notwithstanding the father removes with his family to a township in another county, and there abandons them, if neither he nor his family remain in such township long enough to acquire a new settlement. Trustees of Spencer Tp. *v.* Trustees of Pleasant Tp., 17 Ohio St. 31.

The abandoned wife, during coverture, is not able to acquire for herself or minor child a legal settlement different from that of her husband, the father of the child. Ibid.

If such abandoned wife obtain a divorce granting her the custody of the child, she can not, as a *feme sole*, acquire a legal settlement until a sufficient time has elapsed, after the divorce, to enable her to acquire such settlement. Ibid.

The antenuptial agreement of a second husband, to support the minor child of his wife by the former husband, does not, of itself, change the legal settlement of the child. Ibid.

A lunatic having been removed, by her guardian, from the township where she had obtained a legal settlement, to another township of the same county, where she resided with, and was maintained by, the guardian for several years, it was held that she had lost her settlement in the first-mentioned township, and that such townsb'p could not be charged with her maintenance. Trustees of Jackson Tp. *v.* Trustees of Polk Tp., 19 Ohio St. 28

or she has continuously resided and supported himself or herself, for twelve consecutive months, without relief under the provisions of the laws for the relief of the poor, with the following exceptions:

1. An indented servant or apprentice, legally brought into this state, is deemed to have obtained a legal settlement in any township in which such servant or apprentice shall have served his or her master or mistress for one year continuously.

2. The wife or widow of any person whose last settlement is, or was, in any township in this state, is to be considered as settled in the same township; but if she has not obtained a settlement in this state, she must be held to be settled in the place where she was last settled previous to her marriage. 1492.

Continuance of settlement.—The settlement which a person has legally obtained in a township, continues until he or she has obtained a legal settlement elsewhere. 1493.

Liability of the township upon complaint made.—If any person having knowledge of the fact, forthwith makes complaint to the trustees that any person in the township is in a condition requiring public relief or the services of a physician or surgeon, the township thereupon becomes liable for any relief which may have been, or may thereafter be, furnished to any one in condition to require the same. 1494.

When complaint is to be made and services rendered.—If medical service is required, the attending physician or surgeon is required to immediately notify the trustees, or one of them, in writing, that he is attending a pauper, and thereupon the township becomes liable for all relief and for services rendered, which may thereafter be afforded to such person, only in such amount as the trustees determine to be just and reasonable. If notice be not given within three days after relief is afforded, or service begins, then the township is liable only for such services or relief as may be rendered after notice has been given, but the trustees, or one of them, may at any time order the discontinu-

[1] For the act making special provision as to medical relief in counties having a population of not more than 40,076 and not less than 40,081, see 89 Ohio Laws, 109.

ance of such services or relief, and they will not be liable for any services or relief thereafter rendered. 1494.

Inquiry to be made as to pauper.—Upon complaint made to the trustees as aforesaid, it is their duty forthwith to visit the person needing relief to ascertain the name, age, sex, birth-place, length of residence, previous habits, and present condition of such person, and especially where he or she is legally settled. 1495.

Removal of pauper.—Where it has been ascertained by the trustees of a township that any pauper therein has a legal settlement in some other county of this state, it is their duty to immediately notify the directors of the infirmary of the county in which the pauper is found, and of said directors, immediately, should the pauper's health permit, to remove him or her to the infirmary of the county where his or her legal settlement is, which county is required to pay all the expenses of removal and the necessary charges for relief,[1] if such notice was given within twenty days after the pauper's legal settlement was ascertained by the first named directors, and upon refusal or failure to pay therefor, may be compelled so to do by a civil action, by the board of infirmary directors of the county from whence the removal is made, against the board of infirmary directors of the county to which the pauper is removed, in the court of common pleas of the county to which the pauper is removed. 1496.[2]

No. 81. Form of Notice to Remove Pauper.

To the Directors of the Infirmary of the County of :

Gentlemen:—You are hereby notified that , a pauper being now supported by this township, has a legal settlement in the county of , in this state, and you are hereby requested to cause said pauper to be removed to said last-named county, and collect the necessary charges

[1] In a case where no effort was made to remove the pauper to his own township, and no reason shown why that was not done-it was held that an action could not be maintained by the town, ship furnishing relief, under such circumstances, against the

[2] As amended, 77 Laws, 265; and 83 Laws, 203.

receipt of the treasurer of this the county of , for the sum of dollars, being the first of said installments; and that said , his heirs or assigns, upon the punctual payment of the remainder of said installments, with annual interest up to the time of payment, shall be entitled to receive a final certificate from the undersigned, entitling him to a deed of the following described premises, to wit (*here insert description of the premises in full*).

In testimony whereof, I have hereunto set my hand and official seal, the day and year aforesaid.

Auditor of County.

The foregoing form may be readily adapted to the case of the surrender of a lease.

Other payments.—Any person, wishing to pay money under the law, in part or full payment of such lands, must first obtain a certificate from the auditor of the amount due or to be paid; and on presentation of the same, the treasurer is authorized to receive the amount therein specified, and must give the person paying, a certificate directed to the auditor, of the payment of such sum of money, and the auditor, on presentation of the certificate, is required to give the person a receipt, credit him with the amount paid, and charge the treasurer with the same. 1430.

Report by county to state auditor.—The county auditor must keep an account with the treasurer of all sales and leases surrendered, and the moneys paid thereon by each purchaser or lessee, and make a report of the same to the state auditor, on the first day of February, May, August and November of each year, distinguishing between the amount paid in as principal and the amount paid in as interest. 1431.

Disposition of fund arising from sale.—From the time of the auditor's report, the state is liable to pay interest on all sums reported as principal; and the treasurer of state, on

receiving a certified copy of the account from the auditor of state, is authorized to draw such principal from the county treasurer. The amount reported as interest is to be retained in the county treasury, and apportioned to the several civil townships and parts of civil townships in the original surveyed township or fractional townships to which the lands belong. 1431.

Enforcing payment.—If any purchaser or lessee fail to pay within twelve months after any payment is due, the auditor must forthwith proceed to sell the lands, with all the improvements thereon, at the door of the court-house, to the highest and best bidder, in cash, having first given notice of the time and place of the sale, with a description of the lands, and stating the money due and to become due, by publishing the same in a newspaper of general circulation in the county, for six consecutive weeks before the day of sale. 1432.[1]

No. 79. Form of Notice of Sale.

Sale of School Lands.

Notice is hereby given that, on the day of 18 , at o'clock A. M. (*or* P. M.), I will offer for sale at public auction, at the door of the court-house, in , the following described real estate, viz. (*here insert description of the lands*), to be sold to the highest and best bidder, in cash, but not for less than the sum of dollars, the amount due and to become due thereon, by reason of the sale of said premises heretofore made, but not perfected.

(Date.) (Signed.) —— ——

Auditor of County.

Not to be sold for less than amount due; failure to sell.—At such sale no bid can be entertained for a sum which is not sufficient to pay all the purchase money due to the state, and all expenses incident to the sale; and in case the premises can not be sold for that amount, they revert to the state, in trust for the township, and may be sold in the

[1]Amended, 88 Laws, 321.

manner above set forth, as for the sale of lands not under permanent lease, and in any such case whether arising before or after the passage of the revised statutes of 1880, the auditor, in lieu of a sale of such land, may institute a suit against said purchaser or lessee, and all other parties who have or claim an interest in the land, in the court of common pleas of the county in which the land is situate, in his own name, for the use of the proper township, and prosecute the action to final judgment and execution. 1432.[1]

The auditor must prosecute the action to final judgment, and may have an order of sale, and have the premises sold with all improvements thereon as upon execution at law, and the sheriff's deed will convey to the grantee therein the legal title to the land, all the rights of the state, of the original township, and of the parties to the action. The auditor may also have an execution for any unsatisfied balance after such sale, but the balance must be recovered equally from all the lessees, their heirs or assigns, and no one is liable for more than his *pro rata* share thereof. The proceeds of the sale with costs and expenses must be paid by the sheriff to the county treasurer, and the sheriff must at the same time certify the fact of the sale to the county auditor, to whom sold, with a description of the land, the amount for which the same was sold, with a statement of the distribution of the same, and the auditor must report the same to the state auditor, in the manner shown on page 80. 1432.[1]

It is sufficient if the auditor allege in his petition the sale of the land, with a description thereof, and that there remains due and unpaid the amount claimed with interest, and he is not required to set forth any special matter or proceedings in connection with the sale, and the auditor's record kept according to law is made proof of the sale and of the validity thereof, and his record of the amount claimed to be due is

[1] As amended, 88 Laws, 321.

prima facie evidence of the correctness of the same, and none of the judgment debtors are entitled to any stay of execution or homestead exemption in such case. 1432*a*.[1]

Payment and deed on sale of forfeited lands.—In case the forfeited lands sell, except when sold under proceedings in civil action, the purchaser is to pay to the treasurer of the county the amount bid for the lands; and on producing to the auditor the treasurer's receipt for such payment, the auditor must give him a final certificate, stating the fact of such sale, the name of the purchaser, the description of the lands sold, the amount for which sold, the payment of the amount, and that the purchaser is entitled to receive from the State of Ohio a deed in fee simple for the premises, on producing the certificate to the proper officer. 1433.[2]

Final certificate.—When the purchaser or lessee, at a sale other than of forfeited lands, his heirs or assigns, has made payment in full, the auditor must give him a final certificate, containing, in addition to the first certificate, the fact of the payment in full, and that said person is entitled to receive from the State of Ohio a deed of the premises, in fee simple, on presentation of the certificate to the proper officer or officers. 1434.

No. 80. Form of Final Certificate.

This is to certify that did, on the day of , 18 , at a sale by public auction, had pursuant to proceedings under and by virtue of the statutes, providing for the sale of lands granted by the Congress of the United States for school purposes, known as "section sixteen," purchase the premises hereinafter described, for the sum of dollars, one-third of which sum was by him paid on the said day of sale, and the two remaining installments, with

[1] Enacted April 17, 1891. 88 Laws, 321.

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interest thereon, payable annually, have since been paid in full by him, according to the terms of said sale; and that the said is entitled to receive from the State of Ohio a deed in fee simple for said premises, on presentation of this certificate to the proper officer or officers. Said premises are described as follows, to wit: (*Here insert description in full.*)

In testimony whereof, I have hereunto set my hand and official seal, this day of , 18 .

(Signed,) —— ——

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Deed from the state.—The auditor of state, upon the filing of any such final certificate in his office, must make out a draft of a deed for the lands, and deliver the same, with the final certificate, to the governor of the state, whose duty it is to sign the deed, and cause the same to be sealed with the great seal of the state, and delivered to the grantee on demand. 1435.

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Money paid into the state treasury from the sale of section twenty-nine constitutes part of the irreducible debt of the state, of which the state auditor is required to keep an account with each original township, and the county auditor is required to draw his warrant for the amount of interest due each original township in the county, as certified by the state auditor, after the February settlement of each year. The money is to be distributed by the trustees in the manner provided for distributing the rents and profits of such lands. 86 Laws, 206.

As to certain townships in Ohio Company's purchase.—Sections 16 and 29, or lands granted in lieu of either, may be sold, or permanent leases thereto surrendered, as above set forth, in the following original surveyed townships of the Ohio Company's purchase, to wit: Township 8, in range 12; township 7, in range 13; township 11, in range 14; township 13, in range 15; and townships 8, 9, 10, 11, 12, and 13, in range 16; and any lessees of such lands may have the benefit of the law for the surrender of such leases, though their leases be for a less term than ninety-nine years. 1439.

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Removal of pauper.—Where it has been ascertained by the trustees of a township that any pauper therein has a legal settlement in some other county of this state, it is their duty to immediately notify the directors of the infirmary of the county in which the pauper is found, and of said directors, immediately, should the pauper's health permit, to remove him or her to the infirmary of the county where his or her legal settlement is, which county is required to pay all the expenses of removal and the necessary charges for relief,[1] if such notice was given within twenty days after the pauper's legal settlement was ascertained by the first named directors, and upon refusal or failure to pay therefor, may be compelled so to do by a civil action, by the board of infirmary directors of the county from whence the removal is made, against the board of infirmary directors of the county to which the pauper is removed, in the court of common pleas of the county to which the pauper is removed. 1496.[2]

No. 81. Form of Notice to Remove Pauper.

To the Directors of the Infirmary of the County of :

Gentlemen:—You are hereby notified that , a pauper being now supported by this township, has a legal settlement in the county of , in this state, and you are hereby requested to cause said pauper to be removed to said last-named county, and collect the necessary charges

[1] In a case where no effort was made to remove the pauper to his own township, and no reason shown why that was not done-it was held that an action could not be maintained by the town, ship furnishing relief, under such circumstances, against the

[2] As amended, 77 Laws, 265; and 83 Laws, 203.

for relief furnished to him by the undersigned, a bill of which is herewith inclosed.

Given at, this day of ,18 .

____ _____

____ _____

____ _____

Trustees of *Township.*

____ _____

Clerk of *Township.*

SECTION 2. RELIEF IN COUNTIES HAVING NO INFIRMARY.

Relief.—When the trustees of a township in a county having no county infirmary are satisfied that any person in the township, ought to have public relief, they must afford such relief, at the expense of the township, as in their opinion the necessities of the person require.[1] 1499.

Proposals for maintenance.—When more than temporary relief is required, the trustees must set up a notice in three

township where the pauper had a legal settlement. Millcreek Tp. *v.* Miami Tp., 10 Ohio, 375.

[1] The overseers of the poor of the proper township are bound to support a casual pauper, if found within the limits of the township, and requiring support.

Where, after notice, the overseers of the poor refuse to provide for a pauper, an individual, furnishing a necessary supply, may recover the amount in an action against the township. Cincinnati Tp. *v.* Ogden, 5 Ohio, 23.

The trustees of a township in one county, who have afforded temporary relief to a non-resident pauper, have no right of action against the board of directors of the infirmary of another county, where the pauper had a legal settlement, for the support so furnished; but, under the statute, they may maintain such action against the trustees of the township where the pauper has such settlement. Directors, etc. *v.* Westfield Tp., 21 Ohio St., 373.

Where a woman, whose husband is able to support her, has been driven from her home by his cruelty, and becomes a township charge, the money expended for her support may be recovered from the husband at the suit of the township trustees Howard *v.* Whetstone Tp., 10 Ohio, 365.

public places of the township, specifying the time and place at which they will attend and receive proposals for the maintenance of such pauper, and the notice must be posted up at least seven days before the day named for the receipt of proposals. 1499.

No. 82. FORM OF NOTICE OF RECEIPT OF PROPOSALS.

Notice is hereby given that the undersigned, trustees of township, county, Ohio, will attend at , on the day of , 18 , between the hours of and , for the purpose of receiving proposals for the maintenance of one male (*or*, female) pauper, of about the age of years, for the period of months.

(Date.) (Signed,) ——— ———.

——— ———

——— ———

Trustees of Township.

——— ———

Clerk of Township.

The contract.—The contract for maintenance can not be let for a longer period than one year, and the trustees may contract with such person as they think suitable to take charge of and maintain the pauper, and who will do the same on the most reasonable terms. 1499.

General contract for medical relief.—The trustees of any township in a county having no infirmary may contract with one or more competent physicians to furnish medical relief and medicines for the paupers of their respective townships, who come under their charge under the laws of Ohio, but no such contract can extend beyond two years.[1]

The contract is to be made with the lowest competent bidder, the trustees reserving the right to reject any and all bids, and to annul any such contract at any time, for proper cause.[1]

After such contract, the trustees are not liable for medical relief otherwise furnished, so long as the contract remains in force.[1]

Proposals to be received.—The trustees should invite physicians deemed competent to submit, at a time and place designated, proposals to furnish the necessary relief and medicines. When the award is made, a written contract should be entered into in form substantially as follows:

[1] 86 Laws, 143.

after due inquiry, that the person complained of is in a condition requiring public relief, they must forthwith transmit a statement of the facts, so far as they have been able to ascertain the same, with the amount of relief furnished, if any, to one of the directors of the infirmary. 974.[1]

No. 83. FORM OF STATEMENT.[2]

To the directors of the county infirmary of county, Ohio:

The undersigned, trustees of township, of said county, hereby certify that the person below named requires public charity and support, and is legally entitled to admission into said infirmary.

The said trustees further make the following statement of facts concerning said person, to wit: Name, ; age, ; sex, ; birthplace, ; present residence, ; length of residence in said township, ; present condition, ; previous habits, ; place of legal settlement, . Said person has been furnished by us with temporary relief to the amount of $.

Therefore, in compliance with the laws of the State of Ohio, you are hereby ordered to admit said into the county infirmary of county, Ohio, to be there maintained until duly discharged therefrom, as the law provides.

Done at the office of said trustees, this day of , A. D. 18 .

_____

_____

_____

Trustees of said Township.

[1]As amended, 80 Laws, 108; 83 Laws, 202.

[2]In the blank space following "present residence," give the name of the township, post office address, and such other directions as will enable the directors, should they desire to visit the person, or the driver of such conveyance as they may send for him if necessary, to find him. In the blank following the words "place of legal settlement," state whether the person named is in a condition to be removed, whether a bed is needed for that purpose; if not a native of the township, whether he has ever been warned to leave the township; and if not so warned, why not; as well as any other facts in the case that the said directors should know, and after the statement of amount of relief furnished give the items thereof.

Admission to the infirmary.—If it appear that the alleged pauper has a legal settlement in the township, or has no such settlement in this state, or that such settlement is unknown, and the director is satisfied that the person requires public relief, he must forthwith furnish transportation for the pauper to the infirmary, and receive and provide for him therein. 974.[1]

Expenses of removal and relief.—The directors are to certify the correctness of the bill of the trustees for costs and charges incurred by them in affording relief to such pauper and removing the same, which bill is to be paid on the warrant of the county auditor, if the statement of facts is transmitted to the superintendent within five days after they came to the knowledge of the trustees.[2] 974.[1]

Temporary relief.—If the directors are of opinion that removal is inexpedient, or that the pauper requires temporary relief only, they may indorse the fact upon the warrant, and direct the trustees to keep and afford the pauper such relief, and in such manner and upon such reasonable terms as they may prescribe, until removal becomes expedient or the necessity for relief ceases, and the trustees are required to notify the directors when the pauper can be safely removed or when the necessity for relief ceases. The directors must certify the correctness of the items of the bill of the trustees incurred in affording relief to the pauper after complaint made, which bill is to be paid on the warrant of the county auditor, and the failure of the trustees to transmit the statement above mentioned to the directors within ten days, will render the township liable for the relief furnished. 975.

[1]As amended, 80 Laws, 108; and 83 Laws, 202.

[2]Where money is expended by the trustees of a township, in a county having an infirmary, for the support, as a pauper, of a wife abandoned by her husband, the money may be recovered from him, in a suit by the trustees, although the wife was not removed to the infirmary. Springfield Tp. *v.* Demott, 13 Ohio, 105.

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Therefore, in compliance with the laws of the State of Ohio, you are hereby ordered to admit said into the county infirmary of county, Ohio, to be there maintained until duly discharged therefrom, as the law provides.

Done at the office of said trustees, this day of , A. D. 18 .

_____

_____

_____

Trustees of said Township.

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[1]As amended, 80 Laws, 108; and 83 Laws, 202.

[2] Where money is expended by the trustees of a township, in a county having an infirmary, for the support, as a pauper, of a wife abandoned by her husband, the money may be recovered from him, in a suit by the trustees, although the wife was not removed to the infirmary. Springfield Tp. v. Demott, 13 Ohio, 105.

Accounts of expenses.—The trustees must keep a fair and accurate account of all expenses incurred in support of the poor, and make entries in a book of the names of paupers, and the time when each became chargeable, together with an account of their own service rendered. 1497.

Settlement of accounts.—Such accounts are to be adjusted and settled on the first Monday of March and September, annually, and the township clerk must record them in the township record, and issue an order on the township treasury for the amount thus paid and the services rendered as soon as the same have been paid or the services have been rendered; and the trustees are to issue orders on the treasury for any and all such demands as may arise in relieving the poor as soon as they accrue. 1497.

Vouchers must be furnished—No account for the support of the poor can be audited or allowed to the trustees, or any other person, unless it is accompanied by the proper voucher, is sworn to by the claimant or his agent, and duly certified by the trustees. 1498.

Clerk's annual report.—Immediately after the September settlement, the township clerk is required to make and file with the county auditor a report of the administration of the poor laws in the township for the year preceding that settlement, showing all expenditures in that behalf, as follows: First, the aggregate of physician's fees paid; second, the aggregate paid for supplies, food, clothing, etc.; and, third, aggregate of per diem and expenses of trustees in connection with the poor laws. The infirmary directors may contract with a competent physician or physicians to furnish medical relief and medicines to the poor of their respective townships.[1] 1497.

Penalty for removal of pauper from one part of state to another.—Any person who transports, removes, or brings, or causes to be transported, removed, or brought, any poor or indigent person into any township in this state, without lawful authority, and there leaves such pauper, with intent to make the township chargeable with his or her support, becomes liable to a penalty of fifty dollars for each offense, to be recovered in a civil action, in the name of the State

[1] 79 Laws, 90.

of Ohio, before any court of competent jurisdiction, for the use of the poor of the township.[1] 985.

Committee to make list of indigent soldiers, etc.—It is the duty of the township committee appointed by the soldiers relief commission, on the first Monday of May in each year, to make a list of the names of all the resident indigent Union soldiers, sailors, and marines, or the indigent wives, widows, or minor children of the same, in their opinion, entitled to relief, and who have been *bona fide* residents of the state and of the county six months next prior to that date, and deliver such list to the soldiers' relief commission on or before the last Monday in May in each year. After determining the probable amount necessary for the purpose, the commission must certify the same to the county commissioners, whose duty it is to make the levy necessary for the purpose, not exceeding three-tenths of a mill, except in counties containing a national soldiers' home the levy may not exceed five-tenths of a mill.[2]

Determination of amounts to be paid.—The soldiers' relief commission are required to meet on the fourth Monday of November in each year, and carefully examine the list of those reported as requiring aid, and to fix the amount per month to be paid to each person or family whom they are satisfied require the same.[2]

List to be transmitted to auditor and township clerk.—When the list of those requiring relief is completed, the commission must certify it to the county auditor, whose duty it is to transmit to the clerk of each township, within ten days, a list of the names of the persons in that township to whom relief has been awarded and the amount thereof.[2]

Relief to be paid to township treasurer and by him disbursed.—On the first day of each month after the fund is ready for distribution, the amount awarded each township is required to be paid over to the treasurer thereof upon the warrant of the auditor, and the township treasurer is required to disburse the same upon the order of the township clerk to the persons named in the list furnished him by the auditor—taking receipts therefor. But the commission, upon proper cause shown, may appoint a suitable person to draw out and expend the amount to which any person may be entitled, and it may at any meeting increase, decrease, or discontinue the amount previously awarded.[2] Any change affecting the list is to be certified to the township clerk, who must amend his list accordingly, and certify the change to the township treasurer. If the change increases the amount due the township, the auditor must issue an order to the treasurer for the additional amount. If any money awarded as relief be not called for by the applicant the trustees must, on the first Monday of December annually, report to the commission any balance of the fund in the treasury, and the same is required to be paid into the county treasury to the credit of the relief fund. The town-

[1] 77 Ohio Laws, 39.

[2] 83 Ohio Laws, 232; 84 Laws, 38 and 100; 85 Laws, 158; and 87 Laws, 352.

ship designated in the relief act includes no part of a township embraced within the limits of a city. In townships embracing a county seat, the county treasurer is required to disburse the relief fund of that township to the persons named in the list, to be furnished him by the township clerk. The relief commission may at any time, in case of sickness, accident, or great destitution, upon proper evidence, grant immediate relief to any person entitled thereto under the act.

CHAPTER XX.

ROADS.

SECTION 1. ESTABLISHMENT AND MAINTENANCE OF TOWNSHIP ROADS.

Where township roads may be laid out.—A township road may be laid out from the plantation or dwelling-place of any person or persons, or from any mill or house of public worship, or to any cemetery or burial ground or school-house, or to any public road, or from one public road to intersect another, or from any tract of wild or timber land, or from any stone quarries, coal mines or mineral lands other than petroleum or natural gas lands, to a railroad or railroad station, or from a railroad station to a township, county or state road, or saw-mill.[1] 4672.[2]

Width of.—Such a road must not be less than sixteen nor more than sixty feet wide. 4671.

Petition and notice thereof.—Any person or board of education or directors of a township cemetery, desiring a township road so laid out, for the convenience of petitioner and neighbors, may petition the trustees of the

[1] The statutes authorizing the establishment of township roads are not unconstitutional, for the reason that such roads are as free to public travel as any other roads in the state. Shaver *v.* Starrett, 4 Ohio St. 494.

The act of January 27, 1863 (S. & C. 1289), entitled "an act for opening and regulating roads and highways," as amended April 8, 1856 (S. & C. 1301), is not repugnant to the provisions of the constitution relating to trial by jury, as contained in sections 5 and 19 of article 1. The right of appeal, therein provided for, to the probate court, where a constitutional jury may be had, validates the statute; and the provision for an appeal bond, with sureties, conditioned for the payment of costs adjudged against the appellant, does not contravene the right of trial by jury, as guarantied by the constitution. Reckner *v* Warner, 22 Ohio St. 275.

[1] As amended, 83 Laws, 44; and 88 Laws, 561.

township in which the road is to be laid out. But he, or it, must first give thirty days' notice of such petition, by advertisement posted up at three public places in the township, setting forth in such advertisement the time when the petition is to be presented, the place of beginning, intermediate points, if any, and place of termination of the proposed road.[1] 4672.[2]

No. 85. Form of Notice of Petition.

Notice is hereby given that a petition will be presented to the trustees of township, in county, at their meeting to be held at , on the day of , 18 , praying for the establishment of a township road along the following route, viz.: beginning at , running thence to , and thence to , the place of termination.

(Date.) (Signed,) ——— ———
——— ———
——— ———

The description in the notice should be the same as in the petition.

Proof of notice.—It must be shown to the satisfaction of the trustees that the requisite notice has been given before any steps can be taken by them. 4673.

This can best be done by affidavit, as follows:

No. 86. Form of Proof of Notice.

State of Ohio, *County, ss:*

, being duly sworn, says that, on the day

[1] It is essential to the valid establishment of a township road, that the record should show either that the notice of the application was duly given, or that the trustees, before ordering the view, were satisfied that such notice had been given—the notice being a step which is essential and precedent to the exercise of the power. Ferris *v.* Bramble, 5 Ohio St. 109.

[2] As amended, 83 Laws, 44; and 88 id., 408, 561.

of , 18 , he posted up, at three public places in township of said county, copies of the following notice.

(Signed,) —— ——

Sworn to and subscribed before me, this day of , 18 .

(Official signature.) —— ——

A copy of the notice as posted up should be attached to the affidavit.

The petition.—With the proof of notice the petition may be presented to the trustees, and it may be signed by any number of residents of the township, regardless of property qualification, and must set forth that the petitioners wish to have the road laid out for the convenience of themselves and their neighbors, together with the place of beginning, intermediate points, if any, and place of termination of the road.

No. 87. Form of Petition.

To the Board of Trustees of Township, County, Ohio:

Your petitioners, residents of said township, respectfully represent that it is necessary, for the convenience of themselves and neighbors, that a township road be established along the following route: Beginning at , running thence along , to , and thence to , the place of termination.

Your petitioners therefore ask that such proceedings may be had as are authorized and required by law for the establishment of a road along the proposed route.

(Date.) (Signed,) —— ——,

—— ——,

—— ——,

Hearing of petition.—The petition must be read in open meeting of the trustees; and if, after the reading of the petition, and such hearing as is mentioned in the next paragraph, they are satisfied with the proof of notice, and that the road is necessary, they must require the petitioner or petitioners to enter into a bond, with sufficient security, payable to the State of Ohio, for the use of the township, and conditioned that the persons or the board of education making the application shall pay the amount of all costs and expenses accruing thereon in case the application shall fail. It is provided in this connection that a majority of the trustees shall constitute a quorum for the transaction of all business of which they have jurisdiction. The directors of a township cemetery are not required to give bond when they petition for a road, and no costs or expenses can be assessed against them. 4673, 4674.[1]

Before deciding as to the necessity of the proposed road, the trustees may receive remonstrances against, and hear arguments for and against its establishment.

No. 88. Form of Order.

In the matter of the petition of and others, for a township road in township:

The said , and others, residents of said township, having filed their petition for the establishment of a township road along the following described route (*describe the road, as in the petition*), and the trustees being satisfied from the proof before them that proper notice of the intention to present such petition had been given, according to law,* and that such road is necessary, it is ordered that before further proceedings are had upon said petition, one or more of the petitioners enter into a bond, in the sum of dollars, payable to the State of Ohio, for the use of the township, conditioned for the payment of all costs and expenses accruing thereon if the application shall fail.

*If the trustees refuse a view, proceed as above to the *, and thereafter insert the following instead of that given above:* and said petition being read in open meeting of the trustees, and upon due hearing and consideration, the said trustees being satisfied that said proposed road is not necessary, it

[1] Section 4674, referred to here and in the following pages, is the amended section found in 77 Ohio L. 55, and 4673, is amended in 83 Ohio L. 45; 85 id. 177; and 88 id. 349, 408.

is ordered that said petition be dismissed without further proceedings.

Record of township roads.—In addition to the book for the record of the proceedings of the trustees, and other books specified by law, the township must provide a book for the record of township roads. 1503.

It is in this book that the record of all township roads must be made.

No. 89. FORM OF BOND.

Know all men by these presents, that we , and , of township, county, Ohio, are held and firmly bound unto the State of Ohio, for the use of said township, in the sum of dollars, to the payment of which we hereby jointly and severally bind ourselves, our heirs, executors, and administrators.

Witness our hands, this day of , 18 .

The condition of the foregoing obligation is such, that, whereas, the said and others have filed their petition with the trustees of said township, praying for the establishment of a township road along the following described route (*here describe the route, as in the petition.*)

Now, if the said petitioners shall pay all costs and expenses accruing upon said petition and application if the same fail, then this obligation shall be void; otherwise it shall remain in full force and effect.

Executed in presence of us

In case the application does not fail, the trustees may in their discretion order the petitioner to pay any or all costs and expenses of such application, or may pay all or any portion thereof out of the township treasury.[1]

Appointment of viewers and surveyor.—If the bond be given, as required, the trustees must then appoint three

[1] 4763 as amended, 88 Laws, 349.

judicious, disinterested land-holders of the township. to constitute a jury, and a surveyor, to view the ground and locate the road, and the trustees are required to specify a time when they are to meet and commence the view. 4674.

No. 90. Order appointing Viewers and Surveyor.

In the matter of the petition of and others, for a township road:

The said now comes and files his bond with and , sureties thereon, in the sum of dollars, payable and conditioned according to law, which bond is approved; and the trustees being satisfied that the proposed road is necessary, it is ordered that , , and , three judicious, disinterested land-holders of the township, be and they are hereby appointed as viewers, and , as surveyor, to view and survey said road; that they meet at , on the day of , 18 , at o'clock . M., to begin the discharge of their duties, and that they make due report of their proceedings to this board.

Notice.—A notice of the appointment and time and place of meeting should be sent by the clerk to each of the viewers and the surveyor. 4674, 4646.

Meeting of viewers, oath, etc.—It is the duty of the viewers and surveyors to meet at the time specified in the order, or within three days thereafter, and before further proceedings to take an oath or affirmation, faithfully and impartially to discharge the duties of their respective appointments. 4674, 4646.

No. 91. Form of Certificate of Oath.

We, , , and , viewers, and , surveyor of the township road petitioned for by and others, do solemnly swear (*or*, affirm) that we will faith-

fully and impartially discharge the duties of our respective appointments.

(Signed,) _____

_____

_____

_____

Sworn to and subscribed before me, this . day of , 18 .

(Officer's official signature.) _____

The foregoing certificate of oath should be returned with the report of the viewers.

View of the road.—The viewers and surveyor must take to their assistance two chain-carriers and a marker, and must proceed at the time designated by the trustees, or within three days thereafter, to view the ground along which the road is proposed to be established, and to locate the same as near the line named in the petition as a good road can be had at a reasonable expense. 4674.

Width of township road.—The viewers are required to determine the width of the road, which must be not less than sixteen nor more than sixty feet, as has been already stated. 4671.

Surveyor's duties.—The surveyor is to act under the direction of the viewers, and must survey the line indicated by them, and mark it with monuments and other marks, so that there may be no difficulty in finding the same.

Adverse report.—The viewers may report against the road, if they deem the prayer of the petitioners unreasonable; and in that case it is not necessary to assess any compensation or damages to owners, or determine the width of the road, for such a report puts an end to the proceedings. 4676.

Claim for compensation.—Although the statute seems to contemplate the claiming of damages by the owner before they are assessed, yet it does not specifically require the

same; and unless they have been distinctly disclaimed, it will be better for the viewers to assess the compensation to each owner, and leave him to take the same or not, as he may elect. 4674, 4675, 4666, 4642.

Compensation, how determined.—In determining the compensation to be paid to the owners of land through which it is proposed to establish the road, two distinct acts are required of the viewers. The one is to determine the value of the land to be taken for the road, and in doing so they are to fix the compensation at the full value of the land and of all improvements thereon, without deduction for any benefit the road may be to any property of the owner[1] (4674, 4676); and the other is to assess and determine how much less valuable the remaining land or property from which the part is to be taken will be rendered by the opening and construction of the road; and whether the benefits arising from the establishment of the road can be taken into consideration in this latter case, is a question of some doubt. It has been decided that although *general benefits* (that is, such benefits as arise to all persons owning property on the road, by reason of its establishment), can not be taken into consideration; yet local, special benefits, such as are connected with the injury to any particular piece of land, may be considered, not by way of deducting from the compensation, but for the purpose of showing the extent of the injury to the residue of the land.[2] Under the head of damages may be considered the cost of erecting and maintaining such new fences as may be required along the road; also any other actual injury, such as the destruction of the symmetry of a piece of land by cutting it into parts of less value, or by the interposition of the road between one portion of a farm and another, or between the buildings on a farm.[3]

[1] 4676; Constitution, art. 1, sec. 19, and art. 13, sec. 5; see § 4642

[2] Railroad *v.* Ball, 5 Ohio St. 569.

[3] An assessment may be made by viewers, in the first instance, provided a right of appeal is given to a court in which they may

Report of viewers.—The viewers must make a written report to the trustees, setting forth in full their opinion for or against the establishment of the road, and also, if in favor of its establishment, the width of the same, together with a statement of the damages, if any, assessed to each person through whose land the road is proposed to be established. 4676.

Plat of survey.—A plat of the survey of the road is also to be returned with the report.[1] 4676.

be assessed by a constitutional jury. Lamb *v.* Lane, 4 Ohio St. 167.

No valid appropriation of property to public use can be made without a law providing compensation to the owner, to be assessed in the mode prescribed in the constitution. The constitution, in this particular, does not execute itself. Ibid.

The fair market value in cash, at the time it is taken, must be paid to the owner; and the jury, in assessing the amount, have no right to consider, or make any use of, the fact that it has been increased in value by the proposal or construction of the improvement. Giesy *v.* C., W. & Z. R. R., 4 Ohio St. 308.

A claimant for damages in the alteration of a road is not entitled to recover, where such alteration merely renders the road less convenient for travel, without directly impairing his access to the road from the improvements on his land. Jackson *v.* Jackson, 16 Ohio St. 163.

The provision in section 19 of article 1 of the constitution, that compensation shall be assessed by a jury, without deduction for benefits to any property of the owner, applies to all cases mentioned in that section. Lamb *v.* Lane, 4 Ohio St. 167.

A township road in this state is a public highway, and may therefore be established by the exercise of the right of eminent domain. Ferris *v.* Bramble, 5 Ohio St. 109.

[1] A road which had been surveyed in 1811, was resurveyed, under the statute for that purpose, in 1861; whereupon the owners of abutting property claimed that the second survey brought their private property within the lines of the road, and upon the attempt of the supervisor to improve the road according to the later survey, brought an action of trespass against him: *Held*, that the owners might contradict the record of the later survey by showing that the road, as it had long been used, did not cor

No. 92. Form of Viewers' Report.

To the Trustees of Township, County, Ohio:

We, the undersigned, viewers of the township road petitioned for by and others, respectfully submit the following report:

Together with , surveyor of said road, we met at , on the day of , 18 , at o'clock A. M. (*or*, P. M.), and were duly sworn, a certificate of which oath is herewith returned. And immediately thereafter taking to our assistance and , chain-carriers, and , marker, we proceeded to the discharge of the duties of our respective appointments. Fixing the initial point of the proposed road at (a tree, *or*, other mark), at , we caused the same to be surveyed along the following route (*here describe the road as surveyed*), which is as near to the line proposed by the petitioners as a good road can be made at a reasonable expense.

We are of opinion that the road ought to be established, as the convenience of the petitioners and the public requires it, and the same can be made at a reasonable expense. We have determined, in view of the probable amount of travel over said road, that a width of feet will be proper and sufficient.

We have assessed the compensation due to the owners for land appropriated to the said road, without deduction for benefits to any land by reason of the location of the road, as follows:

To , fifty dollars.

To , sixty dollars, etc.

And we have determined that the remaining premises of said owners will be rendered less valuable by reason of the appropriation, as follows:

respond with the lines of such survey, and that the action might be maintained against the supervisor. Beckwith *v.* Beckwith 22 Ohio St. 180.

To , twenty dollars.
To , thirty dollars, etc.
Witness our hands, this day of , 18

Time employed:
Viewers, one day each.
Surveyor, three days.

—— ——
—— ——
—— ——
Viewers

No. 93. FORM OF SURVEYOR'S REPORT.

The following is the plat of the survey of a township road, made under the direction of the viewers appointed pursuant to the petition of and others: (*Here insert a neatly drawn plat of the proposed road, showing the courses and distances surveyed; also the monuments and conspicuous objects along the line of the same.*) The following are the correct notes of said survey: (*Here insert the field-notes.*)

Witness my hand, this day of , 18 .

—— ——, *Surveyor.*

Return of the reports.—The reports, as soon as the view is completed, should be returned to the township clerk, and he is required to notify the trustees that the same have been filed. 4676.

Fees of viewers, surveyor, etc.—Under the law as it existed before the adoption of the Revised Statute, the viewers were entitled to one dollar and fifty cents each, the surveyor two dollars, and the chain-carriers and maker to one dollar each, for each day that they were necessarily employed about the view or survey, to be paid out of the township treasury; and where the petitioners were required to pay the costs and expenses, this money was to be recovered from them. Under the Revised Statutes, these are the fees allowed for similar services upon county roads. 4664. But the legislature seems to have made no provision for this in the case of township roads. These persons, as is the general rule where there is no provision of law specifying

their pay, would seem to be entitled to such compensation as may have been agreed upon between themselves and their employers, or to reasonable compensation, if no agreement was made. The rates mentioned above would no doubt be proper.

Costs, when to be paid by bondsmen.—If the report of the viewers be against the establishment of the road, no further proceedings can be had, and the obligors on the bond should be compelled to pay all costs incurred by reason of the petition. 4677.[1]

Hearing of report.—At their next meeting after they are notified by the clerk of the filing of the report, it is the duty of the trustees to cause the same to be read in open meeting; and in case the report is favorable to the establishment of the road, and the trustees deem it reasonable and just, and are satisfied that the compensation and damages, if any have been claimed and assessed, are just and equitable, and that the road will be of sufficient importance to the public to cause the same to be paid by the township, they are required to order the same to be paid to the person or persons entitled thereto from the township treasury; but if in the opinion of the trustees, the road is not of sufficient importance to the public to cause the same to be paid by the township, they may refuse to establish the road unless the compensation and damages which have been allowed and assessed, are paid by the petitioner; or they may in their discretion order a portion of such compensation and damages to be paid out of the township treasury, and require the petitioner to pay the remainder before the road is opened.[2] 4677.[1]

Record.—When the viewers report in favor of the road, and it is ordered to be established, the trustees must order the clerk to enter the report on record and issue their order to the petitioners, or any of them, or to the proper supervisor where it is made his duty so to do, to open the road to the width named in the report of the viewers, and the same is to be considered a private or township road to be kept open and in repair at the expense of the applicants for the same, or otherwise as provided by law. 4677.[1]

[1] As amended, 88 Laws, 349.

[2] Ferris *v.* Bramble, 5 Ohio St. 109.

[3] Where a road has been laid out in the manner prescribed by law, opened, and used for many years, it can not be allowed

[5] 79 Ohio Laws, 72.

[5] See p. 204.

No. 94. Form of Order establishing the Road.

In the matter of the petition of and others, for a township road:

The viewers having duly filed their report, with the plat and survey of said road, and the report being in favor of the establishment of the same, and having this day been read in open meeting, and due hearing having been had of all matters for and against the establishment of said road, and the trustees being fully advised in the premises, and being satisfied that the compensation and damages awarded to have been paid, and that the compensation and damages awarded have been tendered (*or*, secured, *or*, paid) to him in money; and being of opinion that said road is necessary, and that its establishment would be rea-

that it shall be suddenly closed by an individual through whose land it passes, on the hypothèsis that the road used does not exactly follow the courses and distances of the recorded survey. Arnold *v.* Flattery, 5 Ohio, 271.

Nor can it be required, after the lapse of many years, that, to sustain a public road, every preliminary step directed to be taken in establishing it must be proven by existing papers or records. Ibid.

The record is *prima facie* evidence of the establishment of a county road; but, on a question between the owner of land over which the road was laid out and the county commissioners, whether they may enter upon the land to construct the road, the owner of the land may show that, in fact, the petition was not signed by twelve freeholders, and no notice had been given, as required by the statute. Anderson *v.* Comm'rs of Hamilton Co., 12 Ohio St. 636.

The statute of March 12, 1845, providing "that any county road which has heretofore been, or may hereafter be, authorized, which shall remain unopened for public use for the space of seven years at any one time, after the order made or authority granted for opening the same, shall be, and the same is, hereby vacated," applies only to roads that have been authorized, but never opened. Peck *v.* Clark, 19 Ohio, 367.

sonable and just, it is ordered that the same be and it is hereby established a township road, of the width of feet; and the clerk is hereby ordered to make due record of the proceeding, and at the end of days from date hereof, unless an appeal is taken, to issue an order to the petitioners, directing them to open the road the aforesaid width.

If the compensation and damages or any part thereof are to be paid by the township, the form should be varied to show the fact.

Order, when to be issued.—The order to open the road can not be issued by the clerk until fifteen days after the same is established, when he may issue the order pursuant to the direction of the trustees, unless an appeal has been perfected. 4687.

No. 95. FORM OF ORDER TO BE ISSUED BY THE CLERK.

To , etc. (naming all the petitioners), *Petitioners for a Township Road:*

Pursuant to the petition heretofore filed by you, and the action duly had and taken thereon by the trustees of township, you are hereby directed to open, without delay, a township road, suitable for public travel, feet wide, along the following described route (*here give copy of the survey*), and to keep the same open and in good repair, according to law.

By order of the trustees of township, county, Ohio.

Witness my official signature, this day of , 18 .

____ _____

Clerk of Township

Repair of road.—After it is opened, the road is to be kept open and in repair at the expense of the petitioners (4677), except in the following instance:

Supervisor, when to repair.—Where any township road commences in a state, turnpike, township, or county road, or at a railroad station, and is not less than thirty feet in width, and passes on and intersects another state, turnpike,

county, or township road, it must be opened and kept in repair by the supervisor in whose district any such township road may be situated in whole or in part; and the costs of the view and survey in such case, must be paid out of the township treasury.[1] 4678.

Township road a public highway.—All township roads are declared by law to be public highways.[2] 4686.

Alteration of a township road.—To change or alter the direction of any existing township road, the same proceedings are to be held throughout as are required for the establishment of a new road (4685), and the foregoing forms may be used in that connection with but slight variation.

Width, how increased or reduced.—The trustees may order the width of any township road to be diminished in the same manner and upon the same proceedings necessary to vacate an existing road, and to be increased in the same manner and upon the same proceedings that a new road is established; but the width can not be increased beyond the maximum, nor diminished below the minimum allowed by law. 4681, 4685.

Vacation of road.—Whenever a township road becomes useless, any number of residents of the township, after giving the notice required to be given of the intention to petition for the establishment of a road, may petition the trustees to vacate such road. 4683.

Order for vacation.—When such a petition is presented, and the trustees are satisfied that the proper notice has been given, and that no injustice will be done thereby, they may, at their next regular meeting, declare the road vacated, and give notice to the clerk, who is to enter the same upon record.[3] 4683.

[1] 79 Ohio Laws, 72.

[2] Ferris *v.* Bramble, 5 Ohio St. 109.

[3] Two circumstances must concur to authorize the township trustees to vacate a township road: First, that the road shall have become useless (this is necessary to give the trustees juris-

No. 96. Form of Order Vacating a Road.

, 18 (*Give date of order*). In the matter of the petition of and others, for the vacation of a township road:

The petitioners, residents of township, having presented their petition praying for the vacation of the road from to , and the trustees being satisfied that due notice of the intention to present such petition has been given, and that said road has become useless, and that no injustice will be done to any person or the public by the closing of the same, it is ordered that said road be, and the same is hereby vacated.

Road along township line.—Where the route of a proposed township road is along a dividing line between two townships, or crosses such dividing line, the person or persons intending to apply for the road must notify the trustees of both townships of such intention. 4679.

diction); and, second, that no injustice will be done by its vacation. De Forest *v.* Wheeler, 5 Ohio St. 286.

The private interest and convenience of citizens must be considered, and should operate very materially upon the determination of the question whether a township road shall be vacated or not. Ibid.

Where a road has been established by a proceeding under the statute, it can not be vacated by a contract or arrangement between the commissioners and an owner of land over which it has been laid out. Evidence of such a contract or arrangement is incompetent. Anderson *v.* Comm'rs of Hamilton Co., 12 Ohio St. 636.

After the jurisdiction of county commissioners, in the matter of laying out or altering a county road, has attached by the filing of a proper petition, etc., such jurisdiction can not be defeated by any number of the petitioners afterward becoming remonstrants against the granting of the prayer of the petition Grinnell *v.* Adams, 34 Ohio St. 44.

No. 97. Form of Notice.

To the Trustees of Township, County, Ohio:

The undersigned, residents of said township, and of township thereunto adjoining, hereby give notice to you that it is their intention to apply for the establishment of a road along the dividing line between said townships, and request that a time and place may be appointed for a meeting of the trustees of said townships, in joint board, to hear such application.

(Date.) (Signed.) ——— ———

——— ———

A copy of the notice should be served on all the trustees of the two townships.

Meeting of joint board of trustees.—On the receipt of such notice the trustees of the two townships must appoint a time and place at which they will meet in joint board. 4679.

Time of meeting.—The time of meeting in joint board must be so fixed that the applicants will have ample time to give the thirty days' notice of the filing of the petition. 4679.

Notice of petition.—The notice of the time and place for the presentation of the petition must be posted in both townships, and should contain the same matter, and be in substantially the same form, as the notice of a petition for a road wholly within one township. 4679. See *ante*, Form No. 86.

Powers of joint board.—The powers and duties of the joint board are the same, with respect to hearing the petition, appointing viewers and surveyor, and taking all other steps necessary to the establishment of the road, as are the powers and duties of a single board with reference to roads within their township, and the necessary proceed-

ings are the same throughout. 4680. See *ante*, this chapter.

Bonds, etc.—Bonds for the payment of costs and expenses must be given in both townships; and should a view be ordered, the joint board are, at the same time, to fix a time and place where they will again meet to hear the viewers and surveyor's report. 4680.

Record.—The proceedings are to be recorded in both townships. 4680.

SECTION 2. APPEALS.

Appeals as to road matters.—An appeal to the probate court, from the final decision of the trustees of the township, on any petition for or report for or againt the establishment of a road, will be allowed, and the court may order another view of the road, and assessment of damages, or make any other order which may be just and reasonable in the case, if the appellant enter into a bond, as described below.[1] 4697.[2]

In like manner, any person in the township may appeal from the final decision of the trustees refusing to vacate a township road supposed to have become useless. 4683.

An appeal may also be had from the decision of the joint board of two townships, establishing or refusing to establish a road upon or across the dividing line of the townships. 4680.

Notice of appeal.—Notice of the appeal should be given, setting forth the grounds upon which it is to be taken, whether from the location of the road, or the assessment of compensation and damages, or both; and when such notice is given it should be entered upon the journal of the proceedings of the trustees.

Bond for appeal.—To perfect the appeal, the appellant

[1] See "*Order, when to be issued,*" on page 204, this chapter.

[2] As amended, 88 Laws, 137.

must enter into a bond to the State of Ohio, for the use of the township, in the sum of one hundred dollars, with one or more good and sufficient sureties to the acceptance of the township treasurer, within fifteen days from the date of the decision by the trustees, conditioned, in case the appeal be from a decision in favor of the establishment of a road, for the payment of all costs and expenses arising from such appeal, if the road shall be established and the assessment of compensation and damages be not increased by the proceedings had in the probate court. If the appeal is from a decision against the establishment of a road, the bond must be conditioned for the payment of all costs and expenses arising from the appeal if the road be not established by the proceedings in the probate court. 4697.[1]

When the appeal is from the decision of the joint board of trustees of the township, such a bond must be given in each township. 4680.

No. 98. Form of Bond for Appeal.

Know all men by these presents, that we, , , and , are held and firmly bound unto the State of Ohio, for the use of township, in county, Ohio, in the sum of one hundred dollars, to the payment of which we hereby jointly and severally bind ourselves, our heirs, executors, and administrators.

Witness our hands, this day of , in the year 18 .

The condition of the foregoing obligation is such, that, whereas, the said has taken an appeal from the decision of the trustees of said township, establishing (*or*, vacating, etc.) a township road on the petition of and others, along the following described route (*here insert description*), to the probate court of said county.

Now, if the said shall pay all costs and expenses that may arise from such appeal, in case said road be established and the assessment of compensation and damages be not increased by the proceedings in the probate court, then this obligation shall be void; otherwise it shall remain in full force and effect.

Executed in presence of us.

If the appeal is from an order against the establishment of the road, the condition of the bond should be varied, so as to conform to the law for that case given above.

[1] As amended, 88 Laws, 137.

The above bond is approved, this day of , 18 .

Treasurer of Township.

Appeal to be entered within six days.—The appeal must be entered, and the original papers in the case, together with a copy of the final order of the trustees appealed from, filed in the probate court, within six days after the filing of the appeal bond. 4697.

Decision of probate court certified to township clerk.—The decision obtained in the probate court must be certified back to the township clerk, who must notify the trustees of the same, who will then make an order disposing of the case agreeably to the order of the probate court. 4698.

Appeals from the assessment of damages.—Every claimant of damages on account of the establishment or alteration of a township road, may appeal to the probate court from the final decision of the trustees confirming the report of the viewers as to the assessment of damages, on account either of the insufficiency of the amount awarded, or the refusal of the viewers to allow any damages to such claimant.[1] 4699.

Joint appeal.—Several claimants may unite in a joint appeal, although their claims may be distinct, or they may severally appeal. 4699.

No. 99. Form of Bond for Appeal.

Know all men by these presents, that we, , , and , are held and firmly bound unto the State of Ohio, in the sum of dollars, to the payment of

[1] A land-owner whose claim for damages in the location of a township road was disallowed by the viewer, is not entitled to an injunction, against the petitioner who is proceeding with an order to open the road, on the ground that the proceedings are erroneous; but, ordinarily, the claimant has no other remedy than error or appeal, even if the rejection of the claim was for a cause wholly insufficient.

which we do hereby bind ourselves, our heirs, executors, and administrators.

Witness our hands, this day of , in the year 18 .

The condition of the above obligation is such, that, whereas, the trustees of township, county, Ohio, did, on the day of 18 , enter their final decision, establishing a township road, on the petition of and others, along the following-described route (*here describe the route.*), and confirming the report of the viewers as to the assessment of damages on account of the location and establishment of said road; and whereas, the said and have appealed from the said decision in respect to the assessment of damages, to the probate court of said county.

Now, therefore, if the said and shall pay all costs that may be adjudged against them in the probate court, or in any other court to which the proceedings may be removed by petition in error, then this obligation shall be void; otherwise, to remain in full force and effect.

____ _____

____ _____

____ _____

Executed in the presence of us.

____ _____

____ _____

The above bond approved, this day of 18 .

____ _____

Auditor of County.

Proceedings in probate court.—The proceedings in the probate court involve the intervention of a jury, which must be duly summoned and impaneled, notice to non-residents, if any are interested, etc. But as these are matters with which the township officers have nothing to do, and properly come under a treatise on probate practice, they need not be given here.

Record, transcript papers, etc., returned to the township clerk.—It is the duty of the probate judge to make a record of all proceedings in that court, including the reports and plats of viewers, reviewers, and surveyors; and forthwith, after the termination of proceedings upon appeal, to transmit to the township clerk a transcript of such record, together with all the original papers received by him from the clerk. 4707.

Order by trustees on receipt of transcript.—The clerk, upon receipt of the transcript from the probate court, must lay it before the trustees, and it is their duty to make an order in conformity with the decision of the court. 4712.

Fees.—The fees prescribed for all persons, and officers rendering services in such appeal cases, are the same as are allowed by law for like services in other cases; and the persons appointed to show the premises to the jury are entitled to such compensation as the court may direct, to be taxed in the cost-bill. 4714.

Section 3. Road Funds and Contracts.[1]

Funds for, how applied.—Money received from the county treasury for road purposes, must be appropriated to the building of bridges or repairing roads. The trustees, after giving public notice, must let by contract to the lowest bidder (if, in the opinion of the trustees, such bidder be competent to perform the work) such part or parts of any road within the township as may be expedient, equal to the amount of money to be appropriated; and when the labor has been performed according to the contract or conditions of the letting, the trustees must draw an order for the payment of the amount due for the same. 1459.

Order distributing funds.—As soon as the fund is received, the trustees should make an order appropriating it to the proper roads and bridges. 1459.

[1] See also section 3, next chapter.

NO. 100. FORM OF ORDER OF APPROPRIATION.

, 18 . Ordered that the moneys received from the county treasury, for road purposes, be appropriated and distributed as follows:

To building a bridge over creek, at the point where it is crossed by the road, the sum of dollars.

To repairing the road, the sum of dollars, etc.

And that said money be applied and expended by the supervisors of the proper districts.

The public notice.—The notice of the letting of such work may be posted up in one or more public places in the township, or published in a newspaper of general circulation therein. It should state the work proposed to be sold, and the time when and place where the sale is to take place.

No. 101. FORM OF NOTICE.

Notice is hereby given that, on the day of , 18 , at the office of the clerk of township, in , will be let to the lowest bidder the following work to wit, the construction of a bridge over creek, at the point where it is crossed by the road, according to specifications on file in this office.

Given at , this day of , 18 .

By order of the trustees of township.

——— ———,

Clerk of Township.

Contract for the work.—After a bid has been accepted, the better plan is to enter into a written agreement with the successful bidder, in form substantially as follows:

No. 102. FORM OF CONTRACT.

This memorandum of an agreement, this day entered into by and between the trustees of township, county, parties of the first part, and , party of the

second part, witnesseth, that said party of the second part does hereby agree and contract to construct a bridge over creek, at the point where it is crossed by the road, according to the specifications attached hereto and made a part of this contract. The whole to be completed in a good and workmanlike manner, of good, sound materials, on or before the day of , 18 . And said parties of the first part agree to pay for said work upon its due completion, according to this contract and the specifications, the sum of dollars. It is mutually agreed that no extra work or materials shall be charged for, unless the same is ordered in writing by the board of trustees.

Witness our hands, this day of , 18 .

_____

_____

_____

Trustees of Township

SECTION 4. MISCELLANEOUS MATTERS RELATING TO ROADS.

As to opening county roads.—The county commissioners, on hearing the report of the viwers who have been appointed to locate, etc., a county road, must have this report publicly read on two different days of the same session, and if no application be made to them for a review of the road, or any part thereof, or alteration, and they are satisfied that such road, or any part thereof, if the same be capable of division, will be of public utility, and the report of the viewers is favorable thereto, and no damages have been claimed or assessed, must, on the third day of the session, cause the report, survey and plat to be recorded; and from thenceforth the road shall be considered a public highway, and the commissioners must issue their orders to the trustees of the proper township, or townships, directing the road to be opened; but if the report of the viewers be against such proposed road, or alteration, or if in the opinion of the commissioners the same is unnecessary, no further proceedings shall be had thereon. 4650.

How county road to be opened.—When a county road is located and ordered to be opened, the trustees of each of the townships adjoining such road, must select one from each of their number, who must meet at some convenient place near the line of the same, the time and place to be appointed by the oldest township interested, previous to the time appointed by law for apportioning labor to their respective road districts, and must assign a sufficient number of persons to open such road and keep the same in repair, dividing the road in such manner that the persons so assigned may work under the orders of the supervisors in the township to which they belong; and the supervisors and persons so assigned shall be governed by the provisions herein contained. 4660.

Penalties against viewers and surveyors.—If a person appointed by the county commissioners as a viewer, reviewer or surveyor of any county road, refuse or neglect to perform the duties required by law, without making satisfactory excuse for such refusal or neglect, he is liable to be fined in any sum not exceeding five dollars, to be recovered by action by any person suing for the same, before a justice of the peace within the township wherein the person so appointed, and refusing or neglecting, may reside; and the recovery must be paid without delay, by the justice of the peace or constable collecting the same, to the treasurer of the township, taking his receipt therefor; and the trustees must cause all such fines so paid into the township treasury, to be expended on roads and bridges within their townships. 4663.

Alteration of county road when destroyed.—When any county road may be injured or destroyed by the washing of any lake, river, or creek, or by any washing or sliding of land occasioned by natural drainage, it is the duty of the trustees of the township in which the injury occurs, upon the petition of any six freeholders of the township, to call to their aid a competent surveyor, and proceed to examine the road as thus injured or destroyed; and if

upon examination, the trustees, or a majority of them, are satisfied that the road has been destroyed, or so much injured that the public good requires an alteration of the same, they must proceed to alter and lay out so much of the road anew as may be necessary to supply the parts destroyed or injured. 4665.

Same, as to state roads.—The provisions of the preceding paragraph are applicable to state roads also. 4634.

Compensation to land-owners.—If any person through whose lands such alteration of a state or county road is laid out, feels injured thereby, such person may make his application to the trustees, at the time of making the alteration on his premises, to assess and determine the compensation to be made in money for the property so taken, and how much less valuable, if any, the premises will be rendered by the alteration of the road. The trustees and surveyor must make a report of their proceedings to the county auditor, in the manner pointed out as to the duty of viewers and surveyors in case of a new road. The auditor and commissioners, upon receipt of such report, must proceed in all respects as in case of a new road. 4666.

Compensation of trustees and surveyor.—The surveyor and trustees are entitled to the same compensation for their services under the two preceding paragraphs as in case of laying out new roads; the surveyor to be paid out of the county treasury, and the trustees out of the township treasury. 4667.

County commissioners to repair certain damaged highways; how. When any one or more of the principal highways of any county have been so damaged or destroyed by freshet, land-slides, wear, or water-courses, or any other casualty, or by neglect or inattention, as to render the same unfit for travel, and hinder free and necessary transportation, and the commissioners of such county are satisfied that the ordinary levies authorized by law for such purpose will not provide enough money to repair such damages, or to remove obstructions from or make the

changes in such road or roads, rendered necessary by such cause, they may, annually thereafter, levy a tax, at their June session, of any sum not exceeding five mills upon the dollar, upon all taxable property of the county, to be expended, under their direction, in such manner as may seem to them most advantageous to the interests of the county, for the construction, reconstruction, or repair of such road or roads. 4919.

How surplus of such tax to be disposed of.—All money assessed and collected under the preceding paragraph, which remains unexpended and unappropriated for six months after the September settlement for the fiscal year of its collection, must be paid to the treasurer of the township from which it was collected; and the trustees must expend it in such way as they deem best for the interests of their township, for the construction, reconstruction or repair of roads, and in repairing or building bridges. 4921.

Railroad crossings.—Whenever a public road is crossed by a railroad, the railroad company must erect, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the nearness of the railroad, and to warn persons to be on the lookout for the locomotive. Such railroad company must also make, at every point where any public road, street, lane or highway used by the public crosses such railroad, safe and sufficient crossings, and keep the same in good repair; and for any neglect so to do, such company will be liable to all damages to person or property, in any manner caused thereby. 3323, 3324.

Depositing dead animals, offal, etc., into or upon roads, etc.—Duty of supervisor.—Whoever puts the carcass of any dead animal, or the offal from any slaughter-house or butcher's establishment, packing-house, or fish-house, or any spoiled meats, or spoiled fish, or any putrid animal substance, or the contents of any privy vault, upon or into any lake

river, bay, creek, pond, canal, road, street, alley, lot, field, meadow, public ground, market space, or common, and whoever, being the owner or occupant of any such place, knowingly permits any such thing to remain therein, to the annoyance of any of the citizens of this state, or neglects or refuses to remove or abate the nuisance occasioned thereby within twenty-four hours after knowledge of the existence of such nuisance upon any of the above described premises owned or occupied by him, or, after notice thereof in writing from any supervisor, constable, trustee, or health officer of any municipal corporation or township in which such nuisance exists, is liable to be fined not more than fifty dollars nor less than ten dollars, or in default of payment to imprisonment for not more than thirty days. 6923.[1]

Guide-boards to be erected and repaired.—The township trustees must cause to be erected and kept in repair, at the expense of the township, a post and guide-board, at all such forks and cross-roads as are kept in repair for general public travel, and lead to some village, depot, or other important public place. This guide-board must contain an inscription in legible letters, directing the way and distance to the village or public place or places situate on each of such roads. 4734.

Penalty for injuring sign-board, etc—Whoever maliciously demolishes, throws down, alters, or defaces any mile-stone, mile-board, mile-post, guide-board, or guide-post, standing on any public road, is liable to be fined not more than fifty dollars, or imprisoned not more than ten days, or both 6879.

Watering places may be provided.—The township trustees are authorized to provide and maintain suitable places for procuring water for persons and animals on the public highways in their township; and two or more townships may join in providing and maintaining such watering place where it is located on or near the township line or on a road leading from one township to another; but not more than fifty dollars can be expended in any township, in any year, for such purpose, to be paid out of any money in the township treasury, not otherwise appropriated. 4736.[2]

Private water-troughs.—The trustees are required to abate three dollars per annum from the highway tax of any inhabitant of a road district, who constructs on his own land and keeps in repair a watering trough beside the public highway, well supplied with fresh water, the surface of the same to be not less than two feet above the level of the ground and easily accessible for horses with vehicles. The trustees may, however, designate the number necessary for public convenience in each road district, and no others can be allowed the abatement of tax.[3]

Waterwheels near roads must be under cover.—The owner or operator of any mill, or other manufacturing establish-

[1] As amended 87 Ohio Laws, 349. [2] 87 Ohio Laws, 14.
[3] 87 Ohio Laws, 38.

ment, near to any public highway, who fails to build or maintain a covert to any water or other wheel attached to such mill or establishment, and exposed to view, is liable to be fined not more than fifty dollars, and to damages to any person injured in person or property in consequence of the fright or alarm of any animal from the action of such wheel. 7009.

Sidewalks along roads authorized.—Any person or any board of education, or any agricultural or religious society, may appropriate, on either side of any public road of legal width, sufficient land to construct thereon a public sidewalk not exceeding six feet in width; but such sidewalk shall not in any manner obstruct any private entrance or public highway. 4909 as amended, 77 O. L., p. 145.

Any land owner may, with the consent of the trustees, grade a sidewalk eight feet wide, and a grass plat with trees therein seven feet wide, outside the sidewalk, along the front of his property, on streets sixty-six feet in width; and on streets sixty feet in width the sidewalk is to be seven feet and the grass plat five feet wide.[1]

Obstructing or injuring such sidewalks.—Whoever sets up any table, stand, tent, wagon, or other article, to use or let for profit, on a public foot-walk or sidewalk constructed by any person, or any board of education, or any agricultural or religious society according to law, or rides, drives, leads, or hitches any horse or other animal, on any such foot-walk or sidewalk, or in any other way obstructs the same, or digs up, or removes any of the material of which the same is composed, is liable to be fined not more than twenty-five nor less than five dollars, or imprisoned not more than ten days, or both. 6884 as amended, 77 O. L., p. 145.

Bridges and approaches on the state and county roads—who must build and repair.—The county commissioners must construct and keep in repair all necessary bridges, and the approaches to them, over streams and public canals, on all state and county roads, free turnpikes, improved roads, and abandoned turnpikes and plank-roads, except in certain cities and villages. But when the cost of the construction or repair of the approaches or way to any such bridge does not exceed fifty dollars, such construction or repairs must be done by the township trustees. 860, 861.

What bridges and culverts the trustees must build.—The

[1] 86 Laws, 101.

river, bay, creek, pond, canal, road, street, alley, lot, field, meadow, public ground, market space, or common, and whoever, being the owner or occupant of any such place, knowingly permits any such thing to remain therein, to the annoyance of any of the citizens of this state, or neglects or refuses to remove or abate the nuisance occasioned thereby within twenty-four hours after knowledge of the existence of such nuisance upon any of the above described premises owned or occupied by him, or, after notice thereof in writing from any supervisor, constable, trustee, or health officer of any municipal corporation or township in which such nuisance exists, is liable to be fined not more than fifty dollars nor less than ten dollars, or in default of payment to imprisonment for not more than thirty days. 6923.[1]

Guide-boards to be erected and repaired.—The township trustees must cause to be erected and kept in repair, at the expense of the township, a post and guide-board, at all such forks and cross-roads as are kept in repair for general public travel, and lead to some village, depot, or other important public place. This guide-board must contain an inscription in legible letters, directing the way and distance to the village or public place or places situate on each of such roads. 4734.

Penalty for injuring sign-board, etc—Whoever maliciously demolishes, throws down, alters, or defaces any mile-stone, mile-board, mile-post, guide-board, or guide-post, standing on any public road, is liable to be fined not more than fifty dollars, or imprisoned not more than ten days, or both 6879.

Watering places may be provided.—The township trustees are authorized to provide and maintain suitable places for procuring water for persons and animals on the public highways in their township; and two or more townships may join in providing and maintaining such watering place where it is located on or near the township line or on a road leading from one township to another; but not more than fifty dollars can be expended in any township, in any year, for such purpose, to be paid out of any money in the township treasury, not otherwise appropriated. 4736.[2]

Private water-troughs.—The trustees are required to abate three dollars per annum from the highway tax of any inhabitant of a road district, who constructs on his own land and keeps in repair a watering trough beside the public highway, well supplied with fresh water, the surface of the same to be not less than two feet above the level of the ground and easily accessible for horses with vehicles. The trustees may, however, designate the number necessary for public convenience in each road district, and no others can be allowed the abatement of tax.[3]

Waterwheels near roads must be under cover.—The owner or operator of any mill, or other manufacturing establish-

[1] As amended 87 Ohio Laws, 349. [2] 87 Ohio Laws, 14.
[3] 87 Ohio Laws, 38.

ment, near to any public highway, who fails to build or maintain a covert to any water or other wheel attached to such mill or establishment, and exposed to view, is liable to be fined not more than fifty dollars, and to damages to any person injured in person or property in consequence of the fright or alarm of any animal from the action of such wheel. 7009.

Sidewalks along roads authorized.—Any person or any board of education, or any agricultural or religious society, may appropriate, on either side of any public road of legal width, sufficient land to construct thereon a public sidewalk not exceeding six feet in width; but such sidewalk shall not in any manner obstruct any private entrance or public highway. 4909 as amended, 77 O. L., p. 145.

Any land owner may, with the consent of the trustees, grade a sidewalk eight feet wide, and a grass plat with trees therein seven feet wide, outside the sidewalk, along the front of his property, on streets sixty-six feet in width; and on streets sixty feet in width the sidewalk is to be seven feet and the grass plat five feet wide.[1]

Obstructing or injuring such sidewalks.—Whoever sets up any table, stand, tent, wagon, or other article, to use or let for profit, on a public foot-walk or sidewalk constructed by any person, or any board of education, or any agricultural or religious society according to law, or rides, drives, leads, or hitches any horse or other animal, on any such foot-walk or sidewalk, or in any other way obstructs the same, or digs up, or removes any of the material of which the same is composed, is liable to be fined not more than twenty-five nor less than five dollars, or imprisoned not more than ten days, or both. 6884 as amended, 77 O. L., p. 145.

Bridges and approaches on the state and county roads—who must build and repair.—The county commissioners must construct and keep in repair all necessary bridges, and the approaches to them, over streams and public canals, on all state and county roads, free turnpikes, improved roads, and abandoned turnpikes and plank-roads, except in certain cities and villages. But when the cost of the construction or repair of the approaches or way to any such bridge does not exceed fifty dollars, such construction or repairs must be done by the township trustees. 860, 861.

What bridges and culverts the trustees must build.—The

[1] 86 Laws, 101.

township trustees must cause to be built and kept in repair all bridges and culverts, except upon improved and free turnpike roads, where the cost of construction does not exceed fifty dollars. 4940.[1]

Tax for same.—The trustees are authorized to levy a tax for the construction of the bridges and culverts mentioned in the preceding paragraph. 4940.[1]

Notice and contracts and forms for such work.—Notice similar to Form 101, on page 221, should be given, and a contract similar to Form 102, on the same page, should be entered into. The forms of notice and contract just alluded to can be readily adapted to suit this case also.

No road can be laid out through any lands belonging to any of the public institutions of the State, without the special permission of the general assembly. 625.

The Reform Farm is a special road district, the superintendent thereof being vested with special supervisory powers. 764.

Section 5. Relating to Free Turnpikes.

Repairs of Improved Roads.

What are "improved roads"—how repaired.—All macadamized roads which are free roads, whether constructed under general or local laws by taxation or assessment, or both, or converted by purchase or otherwise from a toll road into a free road under any law, and all turnpike roads, or parts thereof, unfinished or abandoned by any turnpike company, or declared abandoned by the probate court, must be kept in repair as is provided in chapter ten of the title in the revised statutes relating to roads. 4876, 4918.[2]

By far the greater part of the duties relating to such repairs fall upon officers other than those of the township, and, therefore, only so much of the law relating to this subject as may be useful to them for the purpose of showing

[1]As amended, 84 Laws, 172.

[2]As amended, 80 Laws, 48.

NO. 100. FORM OF ORDER OF APPROPRIATION.

, 18 . Ordered that the moneys received from the county treasury, for road purposes, be appropriated and distributed as follows:

To building a bridge over creek, at the point where it is crossed by the road, the sum of dollars.

To repairing the road, the sum of dollars, etc.

And that said money be applied and expended by the supervisors of the proper districts.

The public notice.—The notice of the letting of such work may be posted up in one or more public places in the township, or published in a newspaper of general circulation therein. It should state the work proposed to be sold, and the time when and place where the sale is to take place.

No. 101. FORM OF NOTICE.

Notice is hereby given that, on the day of , 18 , at the office of the clerk of township, in , will be let to the lowest bidder the following work to wit, the construction of a bridge over creek, at the point where it is crossed by the road, according to specifications on file in this office.

Given at , this day of , 18 .

By order of the trustees of township.

——— ———,

Clerk of Township.

Contract for the work.—After a bid has been accepted, the better plan is to enter into a written agreement with the successful bidder, in form substantially as follows:

No. 102. FORM OF CONTRACT.

This memorandum of an agreement, this day entered into by and between the trustees of township, county, parties of the first part, and , party of the

thereof; and the auditor must give the like notice upon the acceptance or appropriation of any other macadamized or graveled road by the county commissioners. 4890.

Powers of township trustees.—The township clerk, on receipt of such notice from the auditor, must immediately notify the township trustees of such fact, who will, upon receipt of the notice, have full charge and control of all such roads as are herein provided for within their township; and the trustees must divide such road or roads into sections of not less than one-half mile each, and keep them in good repair, and in good condition for all kinds of public travel; and for that purpose they are invested with all necessary powers as to drainage, and the procuring, by purchase or condemnation, and removal of materials required for repairs on such roads, such as are or may be conferred by law upon county commissioners. 4891.[1]

Trustees may assign roads to supervisors.—The trustees may, at their regular March session, each year, apportion and assign to the several supervisors of roads in their townships, or to other suitable persons, such road or roads, or any part or parts thereof, in the road district of such supervisors or persons, respectively, to be by them kept in repair, as required in the preceding paragraph, and under the control and supervision of the trustees 4892.[2]

Trustees' report to commissioners.—It is the duty of the trustees to transmit to the county commissioners, prior to the first Monday in June of each year, a statement showing the number of miles of free gravel road in the township, the amoun of their levy for road purposes, the *pro rata* of the same set apart for keeping such roads in repair, the amount expended for that purpose, and the conditions in which such roads are for public travel. 4893.

No. 103. Form of Statement to Commissioners.

To the Commissioners of County, Ohio:

The undersigned, trustees of township, submit the following statement with respect to the free gravel roads in said

[1]As amended, 82 Laws, 42.

[2]As amended, 81 Laws, 127.

township. There are within said township, or passing through the same, the following free gravel roads, to wit: The road, a distance of miles; the road, a distance of miles—in all, miles of such roads in the township. The amount of our levy for road purposes for the current year is , of which there has been set apart for the improvement and repair of improved and free gravel roads. The amount expended upon the same during year has been dollars. The condition of said roads for public travel is good, except a portion of the road, near , which is in bad condition, and needs repair.

(Date.)

——— ———

——— ———

——— ———

Trustees of Township.

Labor to be set off.—The trustees must provide means for keeping in repair all such roads within their township, and for that purpose must set off persons and districts; such persons must perform their two days' labor as required by law and also labor in commutation of taxes, the same to be worked out under the direction of the trustees, supervisors, or other suitable persons, as provided in the preceding paragraph, who are authorized to give receipts therefor. 4894.[1]

No. 104. Form of Order Setting off Labor and Districts.

Ordered that in road district No. , there be set apart part of the labor and of the road tax for the current year, to be expended under the direction of the supervisor of said district, upon the improved and free gravel roads therein.

Taxes to be set off.—The trustees must also set off, from the common road fund of their township, such amount as shall seem equitable to them, to be an improved road fund, especially applicable to the care and improvement of such roads, and may also allow the use of any plows, scrapers, or other implements owned by the township for road purposes. In any county where the improved roads have been placed under control of the county commissioners, the township trustees may transfer any balance of improved road funds and use the same in the repair of any roads in the township. 4894.[1]

[1]As amended, 81 Laws, 127; and 84 Laws, 85.

upon examination, the trustees, or a majority of them, are satisfied that the road has been destroyed, or so much injured that the public good requires an alteration of the same, they must proceed to alter and lay out so much of the road anew as may be necessary to supply the parts destroyed or injured. 4665.

Same, as to state roads.—The provisions of the preceding paragraph are applicable to state roads also. 4634.

Compensation to land-owners.—If any person through whose lands such alteration of a state or county road is laid out, feels injured thereby, such person may make his application to the trustees, at the time of making the alteration on his premises, to assess and determine the compensation to be made in money for the property so taken, and how much less valuable, if any, the premises will be rendered by the alteration of the road. The trustees and surveyor must make a report of their proceedings to the county auditor, in the manner pointed out as to the duty of viewers and surveyors in case of a new road. The auditor and commissioners, upon receipt of such report, must proceed in all respects as in case of a new road. 4666.

Compensation of trustees and surveyor.—The surveyor and trustees are entitled to the same compensation for their services under the two preceding paragraphs as in case of laying out new roads; the surveyor to be paid out of the county treasury, and the trustees out of the township treasury. 4667.

County commissioners to repair certain damaged highways; how. When any one or more of the principal highways of any county have been so damaged or destroyed by freshet, land-slides, wear, or water-courses, or any other casualty, or by neglect or inattention, as to render the same unfit for travel, and hinder free and necessary transportation, and the commissioners of such county are satisfied that the ordinary levies authorized by law for such purpose will not provide enough money to repair such damages, or to remove obstructions from or make the

changes in such road or roads, rendered necessary by such cause, they may, annually thereafter, levy a tax, at their June session, of any sum not exceeding five mills upon the dollar, upon all taxable property of the county, to be expended, under their direction, in such manner as may seem to them most advantageous to the interests of the county, for the construction, reconstruction, or repair of such road or roads. 4919.

How surplus of such tax to be disposed of.—All money assessed and collected under the preceding paragraph, which remains unexpended and unappropriated for six months after the September settlement for the fiscal year of its collection, must be paid to the treasurer of the township from which it was collected; and the trustees must expend it in such way as they deem best for the interests of their township, for the construction, reconstruction or repair of roads, and in repairing or building bridges. 4921.

Railroad crossings.—Whenever a public road is crossed by a railroad, the railroad company must erect, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the nearness of the railroad, and to warn persons to be on the lookout for the locomotive. Such railroad company must also make, at every point where any public road, street, lane or highway used by the public crosses such railroad, safe and sufficient crossings, and keep the same in good repair; and for any neglect so to do, such company will be liable to all damages to person or property, in any manner caused thereby. 3323, 3324.

Depositing dead animals, offal, etc., into or upon roads, etc.—Duty of supervisor.—Whoever puts the carcass of any dead animal, or the offal from any slaughter-house or butcher's establishment, packing-house, or fish-house, or any spoiled meats, or spoiled fish, or any putrid animal substance, or the contents of any privy vault, upon or into any lake

river, bay, creek, pond, canal, road, street, alley, lot, field, meadow, public ground, market space, or common, and whoever, being the owner or occupant of any such place, knowingly permits any such thing to remain therein, to the annoyance of any of the citizens of this state, or neglects or refuses to remove or abate the nuisance occasioned thereby within twenty-four hours after knowledge of the existence of such nuisance upon any of the above described premises owned or occupied by him, or, after notice thereof in writing from any supervisor, constable, trustee, or health officer of any municipal corporation or township in which such nuisance exists, is liable to be fined not more than fifty dollars nor less than ten dollars, or in default of payment to imprisonment for not more than thirty days. 6923.[1]

Guide-boards to be erected and repaired.—The township trustees must cause to be erected and kept in repair, at the expense of the township, a post and guide-board, at all such forks and cross-roads as are kept in repair for general public travel, and lead to some village, depot, or other important public place. This guide-board must contain an inscription in legible letters, directing the way and distance to the village or public place or places situate on each of such roads. 4734.

Penalty for injuring sign-board, etc—Whoever maliciously demolishes, throws down, alters, or defaces any mile-stone, mile-board, mile-post, guide-board, or guide-post, standing on any public road, is liable to be fined not more than fifty dollars, or imprisoned not more than ten days, or both 6879.

Watering places may be provided.—The township trustees are authorized to provide and maintain suitable places for procuring water for persons and animals on the public highways in their township; and two or more townships may join in providing and maintaining such watering place where it is located on or near the township line or on a road leading from one township to another; but not more than fifty dollars can be expended in any township, in any year, for such purpose, to be paid out of any money in the township treasury, not otherwise appropriated. 4736.[2]

Private water-troughs.—The trustees are required to abate three dollars per annum from the highway tax of any inhabitant of a road district, who constructs on his own land and keeps in repair a watering trough beside the public highway, well supplied with fresh water, the surface of the same to be not less than two feet above the level of the ground and easily accessible for horses with vehicles. The trustees may, however, designate the number necessary for public convenience in each road district, and no others can be allowed the abatement of tax.[3]

Waterwheels near roads must be under cover.—The owner or operator of any mill, or other manufacturing establish-

[1] As amended 87 Ohio Laws, 349. [2] 87 Ohio Laws, 14.
[3] 87 Ohio Laws, 38.

ment, near to any public highway, who fails to build or maintain a covert to any water or other wheel attached to such mill or establishment, and exposed to view, is liable to be fined not more than fifty dollars, and to damages to any person injured in person or property in consequence of the fright or alarm of any animal from the action of such wheel. 7009.

Sidewalks along roads authorized.—Any person or any board of education, or any agricultural or religious society, may appropriate, on either side of any public road of legal width, sufficient land to construct thereon a public sidewalk not exceeding six feet in width; but such sidewalk shall not in any manner obstruct any private entrance or public highway. 4909 as amended, 77 O. L., p. 145.

Any land owner may, with the consent of the trustees, grade a sidewalk eight feet wide, and a grass plat with trees therein seven feet wide, outside the sidewalk, along the front of his property, on streets sixty-six feet in width; and on streets sixty feet in width the sidewalk is to be seven feet and the grass plat five feet wide.[1]

Obstructing or injuring such sidewalks.—Whoever sets up any table, stand, tent, wagon, or other article, to use or let for profit, on a public foot-walk or sidewalk constructed by any person, or any board of education, or any agricultural or religious society according to law, or rides, drives, leads, or hitches any horse or other animal, on any such foot-walk or sidewalk, or in any other way obstructs the same, or digs up, or removes any of the material of which the same is composed, is liable to be fined not more than twenty-five nor less than five dollars, or imprisoned not more than ten days, or both. 6884 as amended, 77 O. L., p. 145.

Bridges and approaches on the state and county roads—who must build and repair.—The county commissioners must construct and keep in repair all necessary bridges, and the approaches to them, over streams and public canals, on all state and county roads, free turnpikes, improved roads, and abandoned turnpikes and plank-roads, except in certain cities and villages. But when the cost of the construction or repair of the approaches or way to any such bridge does not exceed fifty dollars, such construction or repairs must be done by the township trustees. 860, 861.

What bridges and culverts the trustees must build.—The

[1] 86 Laws, 101.

township trustees must cause to be built and kept in repair all bridges and culverts, except upon improved and free turnpike roads, where the cost of construction does not exceed fifty dollars. 4940.[1]

Tax for same.—The trustees are authorized to levy a tax for the construction of the bridges and culverts mentioned in the preceding paragraph. 4940.[1]

Notice and contracts and forms for such work.—Notice similar to Form 101, on page 221, should be given, and a contract similar to Form 102, on the same page, should be entered into. The forms of notice and contract just alluded to can be readily adapted to suit this case also.

No road can be laid out through any lands belonging to any of the public institutions of the State, without the special permission of the general assembly. 625.

The Reform Farm is a special road district, the superintendent thereof being vested with special supervisory powers. 764.

Section 5. Relating to Free Turnpikes.

Repairs of Improved Roads.

What are "improved roads"—how repaired.—All macadamized roads which are free roads, whether constructed under general or local laws by taxation or assessment, or both, or converted by purchase or otherwise from a toll road into a free road under any law, and all turnpike roads, or parts thereof, unfinished or abandoned by any turnpike company, or declared abandoned by the probate court, must be kept in repair as is provided in chapter ten of the title in the revised statutes relating to roads. 4876, 4918.[2]

By far the greater part of the duties relating to such repairs fall upon officers other than those of the township, and, therefore, only so much of the law relating to this subject as may be useful to them for the purpose of showing

[1]As amended, 84 Laws, 172.

[2]As amended, 80 Laws, 48.

them what duties *are not* theirs, and what others *are* or *may become* theirs, is here given.

In Clermont County.

As to such roads in the county of Clermont, there are special provisions. Each township is constituted a road district for the care and maintenance of such roads and they are there under the charge and control of officers entitled pike superintendents, and with them the township officers have nothing to do, except that the township trustees may set off certain persons who must perform their two days' labor, and their labor in commutation of taxes, under the direction of the superintendents. The supervisor can not order or compel such persons to labor under him. The township trustees must also give these superintendents the use of the township plows, scrapers, and other road implements.[1] 4877 to 4888. Some understanding should, therefore, be had, through the township clerk and trustees, who these person so set off are, and when those instruments can be used by the supervisor, and when by the superintendents, in such road districts, where both these road officers have work to do.

In Certain Other Counties.

The law makes each township in the counties of Belmont, Brown, Butler, Carroll, Champaign, Clinton, Columbiana, Cuyahoga, Darke, Delaware, Erie, Franklin, Fayette, Geauga, Greene, Hamilton, Harrison, Henry, Licking, Lucas, Madison, Montgomery, Muskingum, Ottawa, Preble, Ross, Stark, Summit, Trumbull, Tuscarawas, Vinton, Washington, Warren, and Wayne, in which any such free road is situated, a road district for the care and maintenance of such road.[2] 4889.

Auditor to give notice to township clerk.—Unless such notice has heretofore been given, the auditor of each of said counties must immediately give notice to the clerk of each township in which any such road is located, that the trustees are required to take the charge and control

[1] 80 Ohio Laws, 24; and 81 Laws, 80.

[2] 79 Ohio Laws, 40; 80 Id. 89; 81 Id. 80; 81 Id. 202; 83 Id. 5; 83 Id. 63; 87 Id. 324.

thereof; and the auditor must give the like notice upon the acceptance or appropriation of any other macadamized or graveled road by the county commissioners. 4890.

Powers of township trustees.—The township clerk, on receipt of such notice from the auditor, must immediately notify the township trustees of such fact, who will, upon receipt of the notice, have full charge and control of all such roads as are herein provided for within their township; and the trustees must divide such road or roads into sections of not less than one-half mile each, and keep them in good repair, and in good condition for all kinds of public travel; and for that purpose they are invested with all necessary powers as to drainage, and the procuring, by purchase or condemnation, and removal of materials required for repairs on such roads, such as are or may be conferred by law upon county commissioners. 4891.[1]

Trustees may assign roads to supervisors.—The trustees may, at their regular March session, each year, apportion and assign to the several supervisors of roads in their townships, or to other suitable persons, such road or roads, or any part or parts thereof, in the road district of such supervisors or persons, respectively, to be by them kept in repair, as required in the preceding paragraph, and under the control and supervision of the trustees 4892.[2]

Trustees' report to commissioners.—It is the duty of the trustees to transmit to the county commissioners, prior to the first Monday in June of each year, a statement showing the number of miles of free gravel road in the township, the amoun of their levy for road purposes, the *pro rata* of the same set apart for keeping such roads in repair, the amount expended for that purpose, and the conditions in which such roads are for public travel. 4893.

No. 103. Form of Statement to Commissioners.

To the Commissioners of County, Ohio:

The undersigned, trustees of township, submit the following statement with respect to the free gravel roads in said

[1]As amended, 82 Laws, 42.

[2]As amended, 81 Laws, 127.

township. There are within said township, or passing through the same, the following free gravel roads, to wit: The road, a distance of miles; the road, a distance of miles—in all, miles of such roads in the township. The amount of our levy for road purposes for the current year is , of which there has been set apart for the improvement and repair of improved and free gravel roads. The amount expended upon the same during year has been dollars. The condition of said roads for public travel is good, except a portion of the road, near , which is in bad condition, and needs repair.

(Date.)

____ _____
____ _____
____ _____

Trustees of Township.

Labor to be set off.—The trustees must provide means for keeping in repair all such roads within their township, and for that purpose must set off persons and districts; such persons must perform their two days' labor as required by law and also labor in commutation of taxes, the same to be worked out under the direction of the trustees, supervisors, or other suitable persons, as provided in the preceding paragraph, who are authorized to give receipts therefor. 4894.[1]

No. 104. Form of Order Setting off Labor and Districts.

Ordered that in road district No. , there be set apart part of the labor and of the road tax for the current year, to be expended under the direction of the supervisor of said district, upon the improved and free gravel roads therein.

Taxes to be set off.—The trustees must also set off, from the common road fund of their township, such amount as shall seem equitable to them, to be an improved road fund, especially applicable to the care and improvement of such roads, and may also allow the use of any plows, scrapers, or other implements owned by the township for road purposes. In any county where the improved roads have been placed under control of the county commissioners, the township trustees may transfer any balance of improved road funds and use the same in the repair of any roads in the township. 4894.[1]

[1]As amended, 81 Laws, 127; and 84 Laws, 85.

Special levy by county commissioners for improved roads.—When the levy for such roads made by the trustees is insufficient to keep them in repair the county commissioners may make an additional levy, not exceeding two mills, on the property of the county, and when collected the same must be paid over to the treasurers of the respective townships in equitable proportions by order of the commissioners; or in such case the commissioners may make a special levy on the property in any township on the basis of the number of miles of improved roads in the township, sufficient to keep the same in good repair, to be collected as other taxes, paid over to the township treasurer, and by the trustees expended in keeping the improved roads in good repair. 4895, as amended, 80 Laws, 88.

No. 105. Form of Order Creating Improved Road Fund.

Ordered that there be set apart from the road fund the sum of dollars, to be used only for the improvement and repair of improved and free gravel roads within the township.

In all other Counties.

In the counties of Adams, Allen, Ashtabula, Ashland, Athens Auglaize, Brown, Butler, Champaign, Clinton, Coshocton, Crawford, Defiance, Fairfield, Fulton, Gallia, Guernsey, Hancock, Hardin, Harrison, Highland, Hocking, Holmes, Jackson, Jefferson, Knox, Lake, Lawrence, Lorain, Mahoning, Marion, Medina, Meigs, Mercer, Miami, Monroe, Morgan, Morrow, Noble, Perry, Portage, Putnam, Richland, Sandusky, Sciota, Seneca, Union, Van Wert, Warren, Williams, Wood, and Wyandot, the county commissioners are constituted a board of directors, in which the management and control of all such roads, in their respective counties, is exclusively vested. 4896.

Board of turnpike directors.—The directors, at their first meeting, must divide the county into three districts, as nearly equal in number of miles of turnpike, and conveniently located, as may be practicable, and each director must have the personal supervision of one of such districts, subject to all rules and regulations that may, from time to time, be agreed upon by the board; and the directors must hold a meeting, as such board, at least once in three months, at their office at the county-seat, and be gov-

erned, in all transactions, by the rules governing county commissioners.[1] 4897.

The directors may appoint suitable persons to superintend the work of repairs on these improved roads. 4798.

These directors have other rights and duties which need to be only alluded to here. Their proceedings must be recorded in a book, which must be open to the examination of all persons interested; they must cause notice to be published, in at least one newspaper of general circulation throughout the county, of such rules as may be adopted for the regulation of labor and travel on such roads; they may contract for labor and material, either at public sale or private contract; they may certify to the county auditor the amount of money needed to keep the roads in repair; they may enter any lands in the county, and take gravel or other material necessary for the repair of the roads, for which, and for the damages done by reason of such removal of material, they must give the owner a certificate to the county auditor, which must be paid for by the county out of the turnpike fund. Provision is also made for the fixing of the value of this material by the probate court, if the owner is not satisfied with the amount allowed, and for the levy of taxes for the benefit of such roads, their collection, and expenditure. 4898-4907.

What levy township trustees may make.—Upon the issue of the certificate to the county auditor, mentioned in the preceding paragraph, he must levy upon the taxable property of the county such sum, not to exceed three-twentieths of one mill for every ten miles of turnpike completed in the county, the receipts thereof to constitute a turnpike fund in the county treasury, to be paid out only upon the order of

[1] There is nothing to prevent them from employing the supervisors of the districts in which such roads lie as such superintendents, if they are suitable persons. Such supervisors must be governed by such lawful rules and instructions as these directors may adopt for the superintendents, and by the laws governing supervisors, as far as they are applicable.

the county auditor, issued upon the certificate of the board of turnpike directors, properly attested by the clerk of the board; but in all counties wherein a levy is made for turnpike repair purposes, as provided in this paragraph, the commissioners can make no further levy for general road purposes; and in such case the township trustees in such counties may make such levy for common road purposes in their several townships as they may deem proper, not to exceed in amount the combined levy that would have been authorized by county commissioners and township trustees in case no levy had been made under the provisions of this paragraph. 4901.

Township trustees to apportion labor.—In townships wherein such roads are located, and placed under the control of turnpike directors, as above specified, the township trustees must, at their annual meeting in March, designate and set off such portion of the two days' labor as they may deem just and equitable, to be performed under the control of the board of directors or their superintendents, subject to all the rules and regulations of law for its performance under the direction of road supervisors. 4902.

II. The Building of Free Turnpikes.

Certain taxes and labor to be applied toward building free turnpikes.—Chapter 7 of the law relating to roads is devoted to "One Mile Assessment Pikes," which are free turnpikes, built at the request of a majority of the holders of land situate within one mile of such roads, from taxes levied on all lands so situated. It is only necessary to state here that the law defines what proceedings must be had; that the county commissioners must appoint three freeholders of the county, who are then called road commissioners, and who become a corporation to lay out and establish such a road. All this in no way concerns the township officers, except so far as stated in the following paragraphs. Although the provisions of the six next paragraphs are found in the chapter 7 mentioned above, they

are made applicable by law to all free turnpike roads heretofore built, to all that were in process of construction when the law was passed, and to all that may be constructed hereafter. 4812.

So much of any part of the taxes annually levied for road purposes by the trustees of townships, which may be collected within the bounds of any free turnpike road, including the two days' labor authorized by law, must be applied in the construction and repair of the road, under the direction of the road commissioners, or their agents, until the road is completed. 4788.

If, before the completion of the road, the trustees fail to direct the supervisors of any road district, the whole or any part of which is within the bounds of any free turnpike road, to apportion the labor provided for in the preceding paragraph, annually, before the first day of May, and to give notice thereof in writing to the commissioners aforesaid, then all persons liable to do two days' labor, annually, on the public highways, residing within the bounds of any free turnpike road, must do the same under the direction of the commissioners or agent of such road. 4789.

All such persons must perform such labor, after being notified three days previous to the time of doing the same, between the first day of April and the first day of July; but they may pay to the superintendent the sum of three dollars, in lieu of said two days' work, if paid when notified to do the work; and in case of refusal or neglect to do the same, the person so offending shall pay a fine of one dollar, and shall further be liable, in case of non-attendance, to the amount allowed for two days' work, to be collected by the road commissioners, in the same manner that supervisors are authorized to collect in similar cases[1]. 4790.

When such roads turned over to county commissioners, how kept in repair, etc.—These road commissioners must prosecute for all obstructions or other injuries to such roads

[1] See page 244.

while in their charge, and as fast as completed, such roads must be turned over to the county commissioners, and must then be kept in repair as stated in the first part of this chapter. 4795, 4796, 4827.

Road may be made toll road, how and why.—When two consecutive miles or more of any free turnpike road is made in good order for travel or transportation, and the taxes applicable thereto and the two days' labor will not keep the same in repair, the county commissioners may, in the manner prescribed by law, but not necessary to be described here, place toll-gates on such road, and so much toll may be collected as, when added to the common tax of the grand levy and the two days' work, will keep the road in good repair. 4801.

Who to build bridges, culverts, etc.—When the county commissioners believe the public requires it, they must build any or all bridges and culverts on such roads. 4800

For the method to be pursued by the trustees in making contracts for large improvements see the Appendix, p. 401.

Abutting owner may lay pipes in roads.—It is lawful for any owner of land abutting on a township road to lay a pipe line within the line of the road, for conveying water for public and other purposes, if approved by the trustees, but the laying of the pipe must in no way interfere with public travel or damage the road, and it is to be laid under such regulations as the trustees may prescribe.[1]

Roads or sidewalks leading to cemetery.—The trustees of any township, in which there is or may be a cemetery, when it becomes necessary to make or repair roads, or build or improve sidewalks from any public road or from any town or village to such cemetery, may borrow money and issue bonds not exceeding in amount fifteen hundred dollars, at a rate of interest not exceeding six per cent per annum, for the purpose of making, repairing, or building such roads or walks from such public highway, town, or village, to such cemetery. But the trustees must first submit the question of borrowing

[1] *Enacted* April 25, 1891, 88 Laws, 399.

the money and issuing the bonds to a vote of the electors of the township at a special or general election, of which at least ten days' notice must be given, and such submission can only be made upon the petition of a majority of the owners of real estate abutting on the road or sidewalk; but if such petition be presented the law appears to require the submission of the question. 4910.[1]

Dedication of road by plat or deed.—Any person or persons may dedicate any tract or strips of ground to public use as a highway, either by plat or deed of gift to the township, filed with the trustees, and by them recorded as road surveys and other plats, and the trustees may, if they deem such road of sufficient public utility, accept the same, by entry to that effect on their record, and recording as aforesaid, whereupon said tract or slip becomes a legally established highway.[2]

[1] As amended May 4, 1891, 88 Laws, 590.
[2] Enacted April 9, 1889, 86 Laws, 217.

CHAPTER XXI.

SUPERVISOR OF ROADS.

SECTION 1. ELECTION, BOND, OATH, AND TERM OF OFFICE OF.

Road districts.—It is the duty of the trustees, on the first Monday of March, annually, to divide their townships into road districts, or to make such alterations in the existing division as they may deem proper. They should cause the clerk to enter a brief description of the respective districts on the township records.[1] 1457.

Election of supervisor.—A supervisor for each road district is to be elected at the election held on the first Monday of April of each year, at the same time and place and in the same manner that other township officers are elected; and no elector may vote for more than one supervisor, nor can such elector vote for any other candidate for supervisor than one residing in the same district with himself. If it appears to the satisfaction of the trustees that any person has voted for any person or persons for the office of supervisor other than for the district in which the voter resides, the same is to be deemed void so far as that office is concerned. If more votes are cast for any person

[1]A supervisor of roads is an officer, within the meaning of section 20 (now sec. 6908), which provides as follows: "That if any person shall abuse any judge or justice of the peace, abuse or resist any sheriff, constable, or other officer, in the execution of his office, the person so offending," etc. Woodworth *v.* State, 26 Ohio St. 196.

To constitute the offense of resisting an officer, under the above section, it is not necessary that the officer should be assaulted, beaten, or abused. Ibid.

The boys' industrial school in Fairfield county is a special road district and the superintendent of the school has the powers of a supervisor. 83 Laws, 8.

For the act providing for township supervisors in Cuyahoga county, see 87 Ohio Laws, 101.

as supervisor than there are resident electors in that road district, the trustees must declare the election void, and fill the vacancy as in other cases. 1456.

Penalty for refusing to serve; how collected.—A person elected or appointed supervisor, who neglects or refuses to serve, must forfeit and pay to and for the use of his township the sum of two dollars, to be recovered by an action before a justice of the peace of said township;[1] and the township clerk must, in the name of said township, collect said money, by suit, if necessary, and pay it over, when collected, to the township treasurer. 1449.

Need only serve one year at a time.—No person can be compelled to serve as supervisor two years in succession. 1449.

Vacancy, how filled.—In case of a vacancy in the office of supervisor, it is the duty of the trustees to appoint some suitable person having the qualifications of an elector to fill the same; and the person so appointed must take the same oath, give the same bond, and is liable to the same penalty as though he had been elected. 4741, 1451.

Oath and bond.—Each person chosen or appointed to an office under the constitution or laws of this state, must take an oath of office.[2] The township clerk must, within

[1] A person refusing to serve as supervisor, after being elected or appointed, is liable to a fine of two dollars. But he can not be compelled to accept any other township office at the same time he holds the office of supervisor. Hartford *v.* Bennett, 10 Ohio St. 441.

When a citizen is elected to the office of constable, but refuses to serve, and an action is brought against him for the statutory penalty provided for such refusal, and his answer sets up that, at the same election, he was elected to the office of supervisor, and that he accepted the latter office, and qualified and entered upon the discharge of its duties, such answer, on demurrer thereto, discloses a sufficient defense to the action. A citizen will not, in such case, be compelled to accept both offices. Ibid.

[2] The constitution of Ohio also requires such an oath (Art XV., sec. 7).

ten days after the election or appointment of the supervisor, notify him thereof, by the constable, in the manner required by law, and require him to appear before such clerk or other officer authorized by law to administer oaths, and take the required oath of office, and give bond, within ten days after such election or appointment. 1453.

This oath should be taken before the clerk, as it must be recorded by him, no matter who administers it. If administered by some other officer, the law imposes upon such officer the duty of making a certificate of the oath to such clerk, who must then record the oath. (2, 5, 1453–4.) But this is more troublesome, is liable to be more expensive, and to be in part neglected, if not done before the clerk himself.

A supervisor's oath is in substance as follows:

No. 106. FORM OF SUPERVISOR'S OATH.

The State of Ohio, *County,* *Township, ss.*

Before me, clerk of said township, personally came , who, being duly sworn according to law says that he will support the constitution of the United States and the constitution of the State of Ohio; and that he will faithfully discharge his duties as supervisor of road district No. , of township, county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

Sworn to before me, and signed in my presence, on this day of , 18 .

Township Clerk.

The failure of the clerk to take the oath does not affect the liability of his sureties.

Before entering upon the discharge of his duties, each supervisor of roads must give bond, with sureties approved by the trustees, in such sum as they determine, payable to them, and conditioned for the faithful performance of his

duties, which bond must be deposited with the clerk, and if he fails to take the oath and give the bond required, within ten days after receiving notice of his election or appointment, he must be deemed to have declined to accept, and the vacancy must be filled as in other cases. 1415.

Form of bond.—The following is the form of a supervisor's bond:

No. 107. FORM OF SUPERVISOR'S BOND.[1]

Know all men by these presents: That we, as principal, and and as sureties, are held and firmly bound unto the trustees of township, in the county of , and State of Ohio, in the sum of dollars, to be paid to the said trustees of the township aforesaid, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents.

In testimony, we have hereunto set our hands, this day of , A. D. 18 .

The condition of the above obligation is such, that whereas the said has been duly elected and qualified as supervisor of road district No. , of township, county, and State of Ohio, for the term of one year from the day of April, A. D. 18 , and until his successor is elected, or appointed, and qualified.

Now, if the said shall faithfully perform his duties as said officer, then this obligation will be void; otherwise it will be and remain in full force and effect.

——— ———
——— ———
——— ———

The sureties on the above bond approved by us:

———,
———,
———, *Trustees of said Township.*

[1] The office of supervisor has been abolished in the counties of Clinton, Green, Madison, and Warren, and a superintendent appointed by the trustees substituted. See pp. 387, 388.

Serves how long.—The person elected or appointed, as above described, and having duly filed a proper bond and taken the required oath, is fully installed into the office of supervisor of roads for his district, to serve till the next regular spring election, and until his successor, then elected, or soon after appointed, is qualified. 8, 11, 1448, 1450, 1451.

SECTION 2. DUTIES OF SUPERVISOR.

Must open roads.—It is the duty of the supervisor to open, or cause to be opened[1], all public roads and highways which are laid out and established in his district. 4715.

[1] The following extract from Giauque's "Manual for Road Supervisors in Ohio" (page 7), contains suggestions which it is considered well to insert here:

"The law provides how state, county, township, and other roads may be 'laid out and established,' and also how they may be turned, widened, or narrowed, vacated, etc., and what proceedings must be had in such cases. These proceedings are numerous and long, and involve and require petitions, bonds, viewers, etc. But these are the affairs of those desiring the road or the changes mentioned, and with them the supervisor has nothing to do. After all these proceedings are had, and the county commissioners make the proper entries on their minutes, establishing or changing the road as above mentioned, and after the time required by law has passed, the county commissioners must issue their order to the township trustees, directing the road to be opened.

The township trustees of each township through which any part of such new road passes, or in which any such change is made, should receive from the county commissioners, through the county auditor, the order above mentioned, which should clearly describe, by plat or otherwise, the exact location of the new road, or changes in the old one. The trustees, through the township clerk, should then order the supervisors of the proper road districts to open or change such road as directed, particularly and definitely describing the line of the road to be opened or the change to be made.

The supervisor should do nothing at all toward opening or

What are such public roads and highways.—There are roads and highways authorized and regulated in Ohio by

changing such roads, till after he has been officially notified, in writing, by the clerk, what to do.

Having received such notice, he should then notify the persons having control of the land over which such road extends, to remove the fences from the ground such road will occupy. He should do this chiefly to give them a chance to protect their crops, etc., on and near the line of said road, especially if it must be opened before such crops have ripened and been removed.

Should such persons unreasonably delay to comply with his notice, it is then his duty to proceed to so remove them himself, and to improve such road by removing the necessary trees, etc., by grading and otherwise working said road as much as necessary or possible, having due regard to the claims and needs of other roads in his district.

The notice by the supervisor, mentioned above, may be a verbal one, or it may be written, in some such form as follows:

To :

You are hereby notified that a new public road has been duly established, which passes through my district and through your land, as follows (*here describe the line of the road through this owner's land*).

You are requested and required to remove all fences and buildings on your land standing on the line of said road, before the day of , 18

Supervisor.

If the road is narrowed, the adjoining land-owner may set his fences out to the new line; and if the road is ordered to be widened, the supervisor may, after being duly notified thereof by the township clerk, cause the fences to be set back to the new line by the owner, and on such owner's failure to do so, the supervisor may remove them as he would any other obstruction, being careful not unnecessarily to damage or destroy the materials composing such fences. He is simply to *remove*, not to *rebuild* the fences."

See also, notes on pages 235–240.

its laws, but concerning which these laws impose no duties upon the supervisors. These are railroads and canals, toll-roads[1] owned by incorporated companies, and for traveling over which pay is collected at toll-gates, or by other means, and street and alleys in municipal corporations[2]. 3270-3445, 7756–7913, 3472–3526, 2640, 1651.

His duties as to free turnpike roads are pointed out in section 5 of chapter XX.

He must open and keep in repair only such township roads as commence in a state, turnpike, township or county road, are not less than thirty feet wide, and pass on and intersect another state, turnpike, county or township road. (4678.) His duties as to these roads has already been given to some extent in the preceding chapter, and will be further shown on pages 241, and 249.

It is with state and county roads[3] not converted into free turnpikes that the supervisor has most to do.

Supervisor must repair roads, and remove obstructions.—The law provides that every supervisor must not only open, but also keep in repair all public roads and highways which

[1] A supervisor of highways has no jurisdiction or power over turnpikes or plank-roads, constructed by incorporated companies, and placed by law under their control, nor could he justify interference with such roads, although it should be directed by the township trustees. He is bound to know what roads belong to the public, and what to such trustees. Plank-Road Co. *v.* Cane et al., 20 Ohio St. 419.

[2] When any part of a road district is annexed to a city, that part of the road lying in the annexed territory passes out of the jurisdiction of the supervisor, and into the control of the corporation. Steubenville *v.* King, 23 Ohio St. 610.

See also, note on page 266.

[3] A state road is a road running into two or more counties, and is distinguished by this from a county road which lies wholly within one county. The first were formerly established by acts of special legislation; the latter, by county commissioners, under general laws. Reed, J., in State *v.* Treasurer of Wood Co., 17 Ohio. 186.

are laid out and established[1] in his road district, and remove, or cause to be removed, all encroachments by fence or otherwise and all obstructions that may from time to time be found thereon.[2] 4715.[3]

[3] As amended, 86 Laws, 230.

[1] But if a state road, or any part of one, has been laid out for ten years, or a county road, or any part of one, has been laid out for seven years, without having been opened, the law declares them vacated by lapse of time and non-user. 4636; 4668.

The statute providing that county roads shall be vacated by non-user for seven years, applies only to roads that have been authorized, but never opened. Peck et al. *v.* Clark et al., 19 Ohio, 367.

The limitation prescribed in that section of law applies to roads authorized but never opened, and not to roads which have been opened and partially obstructed by a land-holder fencing in a portion of the same. McClelland *v.* Miller, 28 Ohio St. 488.

The public right to a highway may be lost by non-user. The law would raise a presumption of an extinguishment of the right, when the road has been abandoned for a long period, but where there has been a continued use of a highway, and the width has been encroached upon by the adjacent owner for eighteen years, the right is not lost, and the supervisor may open such road to its full width. Fox *v.* Hart, 11 Ohio, 414.

[2] Encroachment upon a highway by an adjoining proprietor for a period of eighteen years, does not take from the public the right to the full width of the road. In such case the supervisor may open the road to its full width. Ibid.

A mere silent acquiescence of the owner of land, in the use of a public road across it, for any period less than twenty-one years, is not *conclusive proof* of a dedication thereof to public uses, but only *evidence*, more or less significant, tending to prove such dedication. Such uninterrupted use for the period of nine years, coupled with other circumstances, indicating an intention on the part of the owner to dedicate it, it may, if satisfactory to the jury, warrant it in finding such dedication, but does not, in and of itself, justify the court *in assuming the fact of dedication.* Penquite *v.* Lawrence, 11 Ohio St. 274.

Where a highway, sixty feet in width, is established across a stream of water, and a bridge twelve feet wide is constructed along the center of such highway, over the stream, and a proprietor of adjoining lands constructs fences from the outer line

Special provision as to obstructions.—The law also provides that at any time during the year when any public

its of the road, inwardly and along the bank of the stream to the bridge: *Held*, that such fences are, *prima facie* at least, obstructions of the highway, and as such it is the duty of the supervisor of the proper district, on due notice, and doing no unnecessary damage, to remove them, and for so doing an action of trespass will not lie against him. Baird *v.* Clark, 12 Ohio St. 87.

The owner of lands adjoining a public highway, regularly laid out and used by the public, extended his fence so as to inclose a portion of the grounds within the surveyed lines of the highway, which portion was not then used or required for the public travel, and kept up the fence without any objection, for more than twenty-one years. *Held*, that such partial encroachment upon the side of a surveyed and traveled highway was not *necessarily adverse* to the public, nor *inconsistent* with its easement. and therefore, constituted no bar to its reclamation by the supervisor, when required for the public travel. Lane *v.* Kennedy, 13 Ohio St. 42.

A supervisor is a local ministerial officer, whose authority and duties to open, repair, and control public roads extends only to roads within his own district. Grove *v.* Mikesell, 13 Ohio St. 158.

Where such supervisor in the improvement of the road in his own district, extends ditches or other improvements beyond the limits of his district, into an adjacent road district, without the permission or consent of its supervisor, such improvements are subject to the discretionary control of the supervisor of the district into which they have been so extended. Ibid.

In an action against a supervisor to recover for acts done by him in opening a public highway over certain lands, the record of the proceedings of the county commissioners in regard to road is not incompetent evidence, because it terms the petitioners for the road "land-holders," instead of freeholders, nor because the viewers are not described as "disinterested freeholders" of the county, nor because it does not show that the plaintiff had notice of the time and place of the meeting of the viewers. It is not competent for the plaintiff in such cases to introduce parol evidence to show that such record was unau-

highway is obstructed, the supervisor of the district must forthwith cause the obstruction to be removed, for which

thorized by the commissioners, or that the road was not legally laid out, nor to show that the plaintiff had no notice or knowledge of the meeting of the viewers, or of the location of the road. Beebe *v.* Scheidt, 13 Ohio St. 406.

By the lawful establishment of a public road, the public acquires a mere easement or right of way on the land over which it passes; but the owner of the fee retains the exclusive right to the trees, shrubs, and herbage growing on the land, for all purposes not incompatible with the right of way, and he may maintain an action in respect to them, when not taken for the purpose of making or repairing the road, or lawfully abated as a hindrance or annoyance to travelers thereon. Phifer *v.* Cox, 21 Ohio St. 248.

The mere fact that trees, shrubs, or herbage stand within the bounds of the road, does not justify any individual, not acting under official authority, in destroying them; but if they are a hindrance or annoyance to travelers, they are a public nuisance, and may be abated or removed by any one lawfully using the road. Ibid.

A supervisor is, in this state, regarded as a ministerial officer, whose duties and authority are limited and prescribed by statute, and which, for the most part, are confined to his own particular district. His duties generally are to open and keep in repair and unobstructed the public roads in his particular district, not owned or operated under private charters or by incorporated companies. His powers and authority have always, in this state, been particularly prescribed by statute. And under these statutes, we understand that the courts of this state have always recognized the right of supervisors to a very liberal exercise of an honest discretion in the discharge of their official duties. It would be most unreasonable, under such statutory provisions, to hold a supervisor to a rigid exactitude in the use of the most appropriate means for the discharge of his duties. Grove *v.* Mikesell, 13 Ohio St. 158.

No penalty is given for obstructing a road authorized by law, nor for permitting the obstruction to remain, unless it is to the *hindrance or inconvenience* of travelers, and therefore the defendant may show that travelers were not accustomed to pass the state

purpose he must immediately order out such number of persons liable to do work or pay tax upon the public road obstructed by him, but that the travel was on a turnpike road, shorter and more convenient. Ingersoll v. Herider, 12 Ohio, 527.

The right of transit in the use of the public highways is subject to such incidental, temporary, or partial obstructions as manifest necessity requires; and among these are the temporary impediments necessarily occasioned in the building and repair of houses on lots fronting upon the streets of a city, and in the construction of sewers, drains, etc. These are not invasions, but qualifications of the right of transit on the public highway; and the limitation on them is, that they must not be unnecessarily and unreasonably interposed. Clark *v.* Fry, 8 Ohio St. 358.

As fuel is necessary, a man may throw wood into the street for the purpose of having it carried into his house, and it may lie there a reasonable length of time. Ibid.

Where a road has been laid out in the manner prescribed by law, opened and used for many years, it can not be allowed that it shall be suddenly closed by any individual through whose land it passes, on the hypothesis that the road used does not exactly follow the courses and distances of the recorded survey. Nor can it be required, after the lapse of many years, that to sustain a public road, every preliminary step necessary to be taken to establish it, must be proven by existing papers or records. Arnold *v.* Flattery, 5 Ohio, 79.

A supervisor can not begin and conduct, in his own name, a suit for an injunction to prevent the obstruction of a public road. Putnam *v.* Valentine, 5 Ohio, 187.

Where, in an action before a justice (for obstructing the road), the plaintiff was described as "A. B., supervisor of road district No. 6, Stonecreek township, Clermont county," on appeal, the supervisor for the time being may file his petition as "supervisor of road district No. 6," etc. Hill *v.* Supervisor, 10 Ohio St. 621.

Where private lands are erroneously included in a road by review and survey, the supervisor is liable in trespass for entering upon the land and digging up the soil; and he is not protected by the record of the survey and the declaration of the statute that the road as surveyed shall be considered a public highway. Beckwith *v.* Beckwith, 22 Ohio St. 180.

A supervisor is not liable for damages to an individual for in

highways of his district as he may deem necessary; if any person thus called out has performed his two days' labor upon the public highways, or paid his road tax, the supervisor must give him a certificate for the amount of labor performed under such order, which may be applied on the labor or tax that may be due from such person the next year. 4746.

The order may be verbal, or written or printed, and may be in form as follows:

No. 108. FORM OF ORDER.

ROAD DISTRICT NO. , TP., Co., O.
, 18 .

To :

You are hereby notified to appear on the day of , 18 , at 7 o'clock forenoon, at , to assist in removing certain obstructions there on the public highway. The labor then done by you will be credited as a part of the two days' labor required of you by law, for the year 18 . You will bring with you the following implements:

, *Supervisor.*

The certificate must be written or printed, and may be as follows:

No. 109. FORM OF CERTIFICATE.

ROAD DISTRICT NO. , TP., Co., O.
, 18 .

I hereby certify that has performed (*one-half, or more, as may be*) day's extra labor on the roads of said district in said year, for which he is entitled to credit

juries that individual has sustained because of the neglect of the supervisor to keep a bridge within his district in repair. The supervisor is liable only for the penalty prescribed by law Dunlap *v.* Knapp, 14 Ohio St. 64.

See also notes on pages 235-6, 272

on any road labor required of him by law during the year 18 .

Supervisor of said District.

When road is boundary of township or municipal corporation.—In case any public road is or may be established as a part of the line or boundary of any township or municipal corporation, the trustees of such adjoining townships, and council of such corporation, as the case may be, must meet at some convenient place as soon after the first Monday of March as convenient, and apportion such road between the townships, or township and corporations, as justice and equity may require, and the trustees of the respective townships, and council of the corporation must have the road opened and improved accordingly. 4747.

Roads on state line.—Supervisors in districts bordering on the state line, along which a public highway exists under the laws of this state, are to open and repair such roads in the same manner as other roads. 4660, 4747.

In case of a road on a county line, it is the duty of the trustees of the townships adjoining such road, to select one from each of their number to meet at some convenient place near the line (the time and place to be appointed by the oldest township interested), previous to the time appointed by law for apportioning labor to their respective road districts, and assign a sufficient number of persons to open the road and keep it in repair, dividing the road in such manner that the persons so assigned may work under the orders of the supervisors in the township to which they belong, and the road is thereafter to be opened and repaired according to such assignment and division. 4660.

In the case of new township roads, the law provides that (after the petition, bond, etc., and other preliminary steps are attended to) if the township trustees deem establishing such a road reasonable and just, they shall order the clerk

of the township to enter the report of the viewers on record, and issue their order to the petitioners to open the road. 4677.

Only public roads to be worked.—A supervisor must not perform, nor cause to be performed, labor on any road not regularly laid out and established by law. 4743.

Who are required to work the roads.—Except as specified below, all male persons between the ages of twenty-one and fifty-five, able to perform, or cause to be performed, the labor required, must do two days' labor on the highways, under the direction of the supervisor of the road district in which he resides. 4717.

Who exempt.—The following are exempt from working on the roads: Honorably discharged soldiers who served in the army of the United States during actual war, pensioners of the United States government, acting and contributing members of companies, troops, and batteries of the "Ohio National Guard," during their membership, and any person who is a member of any fire engine, hook and ladder, hose, or other company for the extinguishment of fire or the protection of property at fires, under the control of the corporate authorities of any municipal corporation, and who receives no pay for such services, during the time he may continue an acting member of such company. 4717.[1]

Supervisors to order out laborers.—Penalties.—Every supervisor must order out every person not exempt, resident in his district, between the first day of April and the first day of July, annually, and direct him to do and perform the work aforesaid on the public roads within the district. 4721.

Service of notice—The notice must be served at least two days before the time fixed for doing the work, either personally, or by written notice left at his usual place of abode 4721.

The notice may be as follows:

[1]As amended, 83 Laws 152.

No. 110. FORM OF NOTICE.

ROAD DISTRICT NO. , TP., Co., O.

, 18 .

To :

You are hereby notified to appear on the and days of , 18 , at seven o'clock forenoon, at (*here state where the work is to be done*), to peform, under my directions, the two days' labor required of you by law, for the year 18 . You will bring with you the following implements: (*name them; and, if required, add* one wagon and team of horses, *etc.*)

——— ———,

Supervisor.

Residence.—The residence of a person having a family is, for the purposes of service, held to be where his family resides, and of every other person at the place where he boards. 4725.

Want of notice does not exempt.—The failure of the supervisor to give the required notice before the first of November, can not be held to release any person liable to work upon the roads. 4722.

Trustees may order work to be deferred.—But if the trustees of any township, or any two of them, within three days after the election and qualification of any supervisor within their township, direct him in writing to defer any portion of the work to a date not later than the first of November, then the supervisor must be governed by the direction so given as to the time the labor shall be performed. 4722.

Teams, wagons, plows, etc., may be ordered.—The supervisor may order any person owning the same to furnish a team of horses, mules, or oxen, and wagon, cart, plow, or scraper, to be used on the road, under the direction of the supervisor (4724), and must allow the person furnishing the same a reasonable sum for the use thereof, in discharge of any labor or tax due from such person.

When person must appear.—Every person ordered out to

perform labor on the public highways, as above set forth, must, by himself or substitute, appear at the place designated, at 7 o'clock in the forenoon, with such tools and implements as he has been ordered to bring. 4724.

Commutation of road labor.—Any person having been duly warned to do his two days' labor, as provided above, may, within three days after such warning is given him, pay to the supervisor, in whose district he resides, the sum of three dollars, which money must be received in lieu of the two days' labor, and be applied, by the supervisor, to the improvement of the road in his district, and accounted for as provided in this chapter. 4718.

Person removing from district.—Any person removing from a road district after having performed, in whole or in part, the required labor, or paid the whole or any part of the commutation for the same, and presenting the supervisor of the district into which he moved a certificate of such performance or payment, will, to that extent, be discharged from work on the roads for that year. 4723.

Penalties.—Any person subject to the performance of road work who fails to attend, in person or by acceptable substitute, after having been duly notified, or attending, refuses to obey the orders of the supervisor, or spends the time in idleness or inattention to the duties assigned him, is liable, in a fine of one dollar for each offense, and is further liable in all cases of non-attendance, to the sum of three dollars allowed for the two days' work, to be recovered before any justice of the peace of the township, at the suit of the supervisor. The money so collected must be applied by the supervisor to the improvement of the roads in his district, and accounted for at his annual settlement with the trustees. 4721.

Supervisor not to be concerned in contract for working out tax.—No supervisor can be directly or indirectly concerned in any contract for working out the road tax, other than his own, and for a violation of this provision any supervisor becomes liable to a penalty of not less than five nor more than fifty dollars, to be recovered by the trustees in an action before a justice of the peace.[1]

Materials may be taken.—Supervisors may enter upon any uncultivated or improved lands unincumbered by crops, near to the road, to cut and carry away timber, except trees planted for shade or ornament on improved

[1] 87 Laws, 222, and sec. 4742.

lands, and to dig or carry away any gravel, sand, or stone necessary to make or improve or repair the road, and the land owner is entitled to a reasonable compensation, to be assessed by the trustees and paid as provided on page 255. In case such land owner is dissatisfied, he may appeal to the probate court as in cases relating to the establishment of a road. See *ante*, page 216. 4715.[1]

Drains and ditches.—For the purpose of making such drains or ditches as he may deem necessary for the benefit of the road, the supervisor may enter on any lands lying near the road, and, with as little injury to the lands, timber, and improvements thereon as the nature of the case will permit, construct through such lands the proper drains, conducting them to the nearest water-course. Such drains are to be kept open by the supervisor, and any owner or occupant of the lands, or other person obstructing the same, will be subject to a fine of not more than ten dollars for each offense, to be collected by the supervisor, paid over to the treasurer, and applied to the township road fund.[2] 4716.

Material certificate.—For any timber, stone, sand, or gravel, taken by him for making, improving, or repairing any road or bridge, the supervisor must, on demand of the owner of the lands, his agent, or the guardian of any ward, or any executor, having the lands in charge from which the materials were taken, give a certificate showing the quan-

[1] As amended, 86 Laws. 230.

[2] The act of February 27, 1867, "relating to roads and highways," provides that township trustees may locate ditches or drains upon lands adjoining, or lying near, a public road; but makes no provision for compensation, to be assessed by a jury to the owner for the land appropriated for such ditches or drains. For want of such provision, an appropriation of land under the act would be in contravention of section 19 of article 1 of the constitution. Watson *v.* Pleasant Tp, 21 Ohio St. 667.

When a supervisor, entering to cut timber for repairing a road, commits waste, he becomes a trespasser from the beginning. Palmer *v.* State, Wright, 364.

Under the supervisors' act of March 29, 1832, the authority to cut timber to repair roads includes authority to cut for the purpose of repairing a bridge on a road. Nor is the power confined to the period between April 1st and October 12th, but is operative whenever the road, etc., is out of repair. Ib.

tity and value of each kind taken, and the time and purpose for which they were appropriated. 4744.

No. 111. Form of Material Certificate.

To the Trustees of Township, County, Ohio:

Gentlemen:—I hereby certify that I have taken from the lands of , for the improvement of county or state roads in Road District No. , township, material as follows, viz:

perches stone, at - - $
" gravel, at - - $
(etc., etc.)

(Date.) ——— ———

Supervisor Road District No. , Township.

Payment of certificates.—Any person receiving such a certificate must present it to the trustees at some meeting of the board within twelve months after the taking of the materials; and if the trustees are satisfied that the amount is just and equitable, it is their duty to cause it to be paid. After twenty-five dollars have been paid to any one road district out of the township treasury in any one year, upon such certificate or certificates, the remainder of it, or them, must, if allowed, be certified over to the county commissioners, with the accompanying voucher, to be allowed by them, if, in their opinion, the same is just and equitable. 4745.

No. 112. Form of Trustee's Certificate—Road Materials.

Office of Township Trustees.

Township, Co., O.

To the County Commissioners of said county:

We, the undersigned, trustees of said township, hereby certify that, during the year 18 , there has been paid out of the road fund of said township to Road District No. thereof, the full sum of twenty-five dollars, for materials used in making, improving, and repairing the public roads

within said district; that the voucher, hereto attached, for dollars, due to for such materials, used in said district, within said year, has been examined, approved, and allowed by us; that the sum therein mentioned is in excess of said twenty-five dollars, and that the said voucher is by us certified to said commissioners for payment, as the law requires.

(Date.)

Attest: *Trustees of said Township*

Township Clerk.

The voucher (and there may be more than one of them) mentioned on the preceding page is the supervisor's certificate.

How a fund for the payment of such certificates is to be raised by the township trustees.—The township trustees are authorized by statute to levy annually upon the taxable property of their respective townships, in addition to the other taxes authorized by law, a tax sufficient to pay such certificates, not exceeding the amount of twenty-five dollars to each road district in the township. The tax just mentioned must be certified, assessed, and collected as other township taxes. 4745.

Plows and scrapers.—The trustees are authorized to furnish a sufficient number of plows and scrapers for the use of the township, and put them into the possession of the supervisors of the respective road districts, whose duty it is to care for the same when not in use; and for any neglect or improper use resulting in injury to such implements, the supervisor is personally liable. The trustees should take a receipt from the supervisor when the implements are delivered to him, showing the number, kind, and condition of the same; and the supervisor must return them to the trustees, on or before the first Monday of March annually. The amount

for which the supervisor may be liable for such improper use or neglect, may be recovered by action in the name of the trustees. 4735.

The receipt above mentioned may be in form as follows:

No. 113. FORM OF RECEIPT.

NO.	NAMES OF ARTICLES.	CONDITION.
1	Road plow	Nearly new.
1	Scraper	New.
1	Scraper	Much worn.
10	Shovels	Worn.
	Etc.	

Received the articles above mentioned from the township trustees, this day of , 18 .

Supervisor

Road-beds to be leveled off.—Every supervisor must cause to be graded and leveled off, the earth and gravel that may be scraped, shoveled, or hauled into any public road under his direction or charge, at the time that such work is performed; and for any neglect or refusal, on the part of such supervisor, to cause such leveling or grading in a reasonable degree, he will forfeit not less than one dollar nor more than five dollars, to be paid into the township road fund, to be recovered by an action in the name of the township, before a justice of the peace within the township where such supervisor resides; and the trustees of the township, after having been notified by any resident freeholder of the township of such neglect or refusal, must, by one of their number, examine the work, and if he find that it has not been performed, in a reasonable degree

according to the provisions of this section, he must prosecute such supervisor as provided herein. 4729.

Certain persons required to plant willows.—All persons subject to perform labor on public highways, whose lands lie on or are bounded by the Ohio river, are required to perform one day's labor each year, between the months of March and June, in planting willows in such a manner as to afford protection to the banks of said stream during floods, high waters, and at other times. 4719.

Such labor in lieu of road labor.—The supervisor of the district in which such labor is performed must inspect it; and if he deem it sufficient in extent, and performed in such a manner as to fulfill the requirements and intent of the last paragraph, he must give the proper receipt for the same; and this one day's willow planting must be counted and allowed as one of the two days' labor required on the roads., 4720. The form of receipt is similar to that given on page 262.

How certain roads may be improved—supervisor's duties thereto.—The trustees of any township may, upon the written petition of one or more persons interested, describing the road or part thereof proposed to be improved, authorize any person living on or near any unimproved state, county, or township road, situate within the township, which intersects or connects with any turnpike or improved road, to improve any part or all of such road situate within the township, within such time as they may direct, by grading the same not more than sixteen feet wide, and graveling such grade not exceeding twelve feet wide, or otherwise improving the same; such improvement must be made under the instructions of the supervisors of roads within whose districts the road or part thereof to be improved is situate; and as soon as such road or part thereof authorized to be improved as aforesaid, within any road district, is fully improved and completed to the satisfaction of the supervisor of such district, he must estimate the work so done by the several persons

authorized, either by themselves or those employed by them, under such rules and regulations as the township trustees must prescribe as to extent and character of such improvement, and give to such persons a certificate specifying the amount of labor performed by them, stating when authority was given to improve such road, and when the same was completed in his district, and accepted by him, and the value in money of such labor so estimated; but in estimating the value of such labor in money the supervisor must not allow a greater sum than two dollars and twenty-five cents for each team and driver, and not to exceed one dollar for each hand per day for the time actually employed; and in case of dispute between the supervisor, and any person interested in such improvement, as to the manner of making the same, its completion, or the value of the work, the matter in dispute must be submitted to the trustees of the township, and their decision will be final. 4755.

The certificate mentioned above may be in the following form:

No. 115. FORM OF CERTIFICATE.

ROAD DISTRICT No. , TP., Co., O.

, 18 .

I hereby certify that has performed labor on the (*here name or otherwise describe the road*) road within said district, between the day of , 18 , and the day of , 18 , the prices set forth being allowed by me, as follows:

One (*or more, as may be,*) hand, for days, at per day..... ..... $

One (*or more, as may be,*) team, for days, at per day..... .....

The authority to improve said road was given on the day of 18 , and the improvement was completed in said district on the day of , 18 , and accepted by me on the day of , 18 .

Supervisor

The holder of any such certificate will be entitled to have its amount credited on any road tax, payable in labor, levied on the property of such person situate within the county, after the completion of such improvement; if such road tax levied in any year on such property is not sufficient to cover the amount of the certificate, it must be so credited from year to year, until the certificate is fully paid without interest. At the time of making such credit upon the certificate, the supervisor must give to the owner of the certificate a receipt for the road tax charged against him for the current year; and the owner of the certificate may transfer it, or any balance due on it, to any subsequent purchaser of the property owned by him when the certificate was issued. 4756.

The receipt may be in form as follows:

No. 116. FORM OF RECEIPT.

ROAD DISTRICT NO. , TP., CO., O.
, 18 .

The road tax charged against , in said district, for the year 18 , has been paid to the extent of dollars and cents, by labor done in said district in the year 18 , and described in his certificate therefor, dated 18 , and signed by , supervisor. I have this day credited said amount as paid on said certificate.

—— ———, *Supervisor.*

At the same time the foregoing receipt is given, the following or its equivalent must be indorsed on such certificate:

No. 117. FORM OF INDORSEMENT.

On this day of , 18 , I have given to , a receipt for road tax for this year, to the extent of dollars and cents, on account of the within certificate.

—— ———, *Supervisor of the within named District.*

Materials—where obtained.—The trustees, at the time of authorizing such improvement, must direct in their order at what point the materials therefor shall be taken, under

the general laws in force for procuring materials for the improvement of public roads, which point must be the nearest and most convenient to the place where the materials can be procured in the township. Where a road is located in two townships, the material may be procured at the nearest and most convenient point in either. 4757.[1]

Drift against bridges to be removed.—The supervisor of each road district must remove, or cause to be removed, all timber or drift lodged against bridges, except toll bridges or bridges upon toll roads, in his road district, and to remove all timber, drift, and sediment lodged in and obstructing the free passage of water in ditches constructed for draining and protecting such roads, adjoining the line of any free turnpike or other public road in his district, and he is entitled to receive the same compensation for such work as the law allows him for other road work. Any adjoining landowner affected, at the expiration of ten days' notice in writing to the supervisor or superintendent to remove the drift or sediment, may remove the same himself, and he will then be entitled to receive the same compensation from the same source as would the supervisor. The latter is liable to a fine of not less than five nor more than twenty-five dollars for failure to remove such drift and sediment. 4731.[2]

Sidewalks and foot bridges may be built.—A supervisor is authorized to construct sidewalks or foot bridges over streams of water on the line of the roads in his district, of such material and at such expense as the trustees may prescribe, so as not to obstruct the highway or any private entrance, or the trustees may construct the same by contract with the lowest responsible bidder; all such improvements to be paid for out of the township road funds.[3] 4733.

Passways may be constructed.—Any land-holder through whose land a state, county, or township road is now or may be hereafter laid out and established, is authorized, under the direction of the supervisor of the proper district, to construct a passway either over or under such road, so as to permit stock to pass and repass; but the passway must not be constructed over or under any road within the limits of the outlots of a city, town, or village, and must not hinder or obstruct the travel on such roads, and must be kept in good repair at the expense of the land-holder. 4740.

Weeds, bushes, briers, etc., in road to be cut down.—Supervisors must cut down, or cause to be cut down and destroyed, within the months of July and August of each year, all weeds, burrs, bushes, and briers growing within any county or township highway, and also in the months of September and October, whenever it may be necessary to more effectually exterminate them; and for that purpose such supervisor may allow any land-owner a reasonable compensation for destroying such weeds, etc., just mentioned, on the public highway on which such land-owner's

[1]As amended, 83 Laws, 87; and 86 Laws, 28.

[2]As amended, 81 Laws, 132.

[3]78 Ohio Laws, 84.

land abuts. Such compensation must be fixed by such supervisor before such labor is performed, and be credited upon said land-owner's road tax for that year. Whenever the superintendent of any turnpike, upon which toll is taken, fails to cut the weeds, burrs, bushes, and briers thereon, before the first day of September, each year, the township trustees may cause the same to be done, and recover the cost of the same and a penalty of one hundred per cent in an action against the company before any justice of the peace of the township. 4730.[1]

Canada thistles to be destroyed.—The trustees of any township, when notified in writing that any Canada-thistles, teasels, or wild carrots are about to go to seed on any land within the township, must cause the same to be destroyed in time to prevent the seed from spreading, and make return in writing to the board of county commissioners of their county, with their bill of expenses and charges therefor; and this bill, having first been audited and allowed by the board, must be paid from the county fund, at the rate of compensation allowed by law to the trustees for ordinary services; and the amount so paid must be entered upon the duplicate against the land on which the thistles, teasels, or carrots were destroyed, and collected the same as other taxes, and returned to the county fund; but the owner, lessee, or agent of any land upon which Canada-thistles, teasels, or wild carrots are about going to seed, must first be notified by some person interested, at least five days before the cutting thereof by the trustees. 4732.[2]

The supervisor's return in writing above mentioned, may be as follows:

No. 118. Form of Trustees' Return.

Road District No. , Tp., Co. O.
, 18 .

To the County Commissioners of said County:

On the day of , 18 , we were notified in writing that certain Canada-thistles were about to go to seed on the land of , in said district, and on the day of , 18 , we caused said thistles to be destroyed, the said having neglected so to do.

The bill of charges and expenses therefor is as follows: (*here give the items.*)

——— ———
——— ———
——— ———

Trustees of —— Township

[1]As amended, 81 Laws, 22. [2]As amended, 81 Laws, 17

Suffering Canada-thistles to grow on land or highway.—Whoever knowingly vends any grass or other seed, in or among which there is any seed of the Canada-thistle, white or yellow daisey, and whoever, being the owner or possessor of any land, suffers any Canada-thistle to grow and ripen seed thereon, or on the highway adjoining the same, is liable to be fined twenty dollars. 7001.

Hedges.—The supervisor's duties as to hedges has been already stated in the chapter referring to "Fences and Inclosures," p. 130.

Duties and penalties of road supervisors as to animals running at large.—It is the duty of all road supervisors, upon view or information, to cause all swine found running at large upon roads within their respective districts to be impounded, and such further proceedings had as are required and pointed out in the chapter relating to estrays (p.341), and if any such road supervisor fails or refuses to perform such duty, he is liable to be fined not less than two, nor more than five dollars for each offense, to be collected in a suit brought in the name of the State of Ohio, on complaint of any person feeling aggrieved, before a justice of the peace, or other court having jurisdiction where the offense is committed; and the trustees of the township are authorized and required to retain, from any sum that may be due and unpaid to such supervisor for services rendered in his official capacity, any unpaid costs or fines so arising. 4203 as amended. 77 v. Ohio L. p. 318. 4204.

Obstruction of roads by railways.—Any person, corporation, conductor of a train, or other agent or servant of a railway company, who unnecessarily obstructs any public road or highway, by permitting any railroad car or cars, or locomotive, to remain upon or across the road for a longer period than five minutes, or permits any timber, lumber, wood, or other obstruction to remain upon or across the road, to the hinderance or inconvenience of travelers, or any person or persons passing along such road, every person or corporation so offending must forfeit and

pay a fine not exceeding twenty nor less than two dollars, and be liable for all damages to any person injured by such obstruction, to be recovered by action at suit of the trustees of the township wherein the offense was committed, or by any person, before a justice of the peace[1] of the county, or

[1] By section 32 of the act relating to roads (S. & S. 669), township trustees are authorized to bring civil actions to recover the statutory penalty for obstructing and permitting obstructions to remain upon and across public roads or highways authorized by the laws of this state, to the hinderance and inconvenience of travelers or other persons passing along or upon such public road or highways. Trustees of Burton Township *v.* Tuttle et al., 30 Ohio St. 62.

The statute giving the cause of action confers jurisdiction over it upon justices of the peace. Ib.

In actions prosecuted under the provisions of this statute, where the obstruction is alleged to have been caused by a railroad car, or cars, or locomotive, it must be averred in the petition that the public road or highway was obstructed unnecessarily by permitting such railroad car or cars, or locomotive, to remain upon or across the public road or highway for a longer period than five minutes, to the hinderance, etc. In actions for obstructions to public roads caused by agencies other than railroad cars and locomotives, in describing the manner of the obstruction, the word "*unnecessarily*" forms no essential part of the description of the cause of action. Ib.

It is no valid objection to the jurisdiction of a justice of the peace in this class of cases, that on the trial, the right of the public to the use of the roadway, as a public highway, may involve, to some extent, the title to the land at the place of alleged obstruction. As the statute confers original jurisdiction upon justices of the peace over the cause of action, by necessary implication it vests authority in justices' courts to hear and determine all questions necessary to render a final judgment. Ib.

The person who maintains a mill-race, diverting water from its natural flow through the race to his mill, for private use, which mill-race cuts and crosses a public road previously established over his land by authority of law, which race unbridged is an obstruction across the highway, to the hinderance and inconvenience of travelers and persons going along and upon such

by indictment in the court of common pleas. Every twenty-four hours such person or corporation permits the obstruction to remain, after being notified to remove the same, is to be deemed an additional offense. 4748.

Fines collected under these provisions are to be paid into the township treasury for the improvement of the roads and highways. 4748.

Corporation liable for employes.—Railroads and other corporations are liable for all fines or penalties assessed against their servants, agents, or employes, for the obstruction of roads or highways, and such liability may be enforced by execution against the company, on judgment against the servant, agent, or employe. 4749.

How fires in woods or prairies extinguished.— Whenever the woods or prairies in any township are on fire, so as seriously to endanger property, the trustees of such township may order as many of the inhabitants of the township, liable to work on the highways, and residents in the vicinity of the place where such fire is, as they may deem necessary, to repair to the place where such fire is, and there to assist in extinguishing the same, or stopping its progress; and every person called out, under the provision of this section, must be allowed, by the supervisor of his road district, to be applied on his poll or road tax, the same amount per day that he is now allowed for work on public highways. 4750.

The following certificate may be given:

No. 119. FORM OF CERTIFICATE.

ROAD DISTRICT No. , TP, Co., O

, 18 .

I certify that has been, by me, ordered out to assist in extinguishing fires in the woods (*or*, prairies, *as may be*).

public highway, must place a sufficient bridge over the race at the point of obstruction, and keep it in repair so that the highway will be as good and safe for public travel as before the race was constructed. Ibid

in said district; that he was thus employed for (*state how long*), for which he is entitled to seventy-five cent, to be credited to any road or poll tax against him now due or to become due.

———

Supervisor.

Penalties for refusal to assist, etc.—If a person refuse or willfully neglect to comply with such order, he shall forfeit a sum not less than five nor more than fifty dollars, to be collected before any justice of the peace of the township. 4751.

Whoever maliciously or negligently sets fire to any woods, prairies, or grounds not his own property, or maliciously permits any fire to pass from his own prairies or grounds, to the injury or destruction of the property of any other person, is liable to be fined not more than one hundred dollars, or imprisoned not more than twenty days, or both. 6834.

Bridges over mill-races, etc.—No person possessed of the right to any water privileges is required by law to build, nor keep in repair, and bridge over any mill-race or water-course constructed by such person across any public road for hydraulic purposes.[1] 4752.

When any road is hereafter established, the owner of such right must file in the county auditor's office, within a year after such road is established, a written declaration of such right, describing and stating, as near as practicable, where he intends some time to excavate a mill-race or water-course across the road. This declaration must be recorded by the auditor, and will secure such right to the owner, his heirs, and assigns. But nothing in this section can prevent such owner from constructing a mill-race

[1] See last paragraph of note 1, page 255.

or water-course across any public highway already established, on giving the notice required in the next paragraph. 4753.

Duty of supervisor in certain cases.—When any person excavates or constructs a mill-race across a public highway, he must give at least thirty days previous notice, in writing, to the trustees of the proper township, of his intention so to do; and if he fail or neglect to give such notice, the supervisor of the proper road district may, if, in his opinion, the public good demands it, fill up such mill-race or water-course, at the cost of the party so failing and neglecting to give notice, to be recovered by the supervisor, together with fifty per centum thereon, and the costs of suit, for the use of such road district, in an action before any court of competent jurisdiction. 4754.

Supervisor to collect fines.—The supervisor must collect, by suit[1] or otherwise, all fines, forfeitures, and penalties arising under the provisions of the road laws, unless their collection is otherwise provided for. And he is required to prosecute to final judgment all persons neglecting or refusing to comply with the law as to road work, from whom, in his opinion, the penalty can be collected by execution. The costs in any such case, when the same are not collected from the defendant, are required to be paid by the trustees of the township and out of the township fund. 79 Ohio Laws, 138. 4726.

Execution may be issued at any time.—The supervisor may sue out executions on any judgments remaining unpaid

[1] But he can not be held personally liable for the payment of costs in such cases. See par. 5, and Bittle *v.* Hay, 5 Ohio, 269.

An action for obstructing a highway should be brought, not in the name of the supervisor *individually*, but the plaintiff should be supervisor of road district No. , in township , of county. Hill *v.* Supervisor, 10 Ohio St. 622.

Where, in an action before a justice of the peace, the plaintiff was described as A. B., supervisor of road district No. 6, Stonecreek, Clermont county, on appeal, the supervisor for the time being may file his petition as "The Supervisor of Road District No. 6," etc. Ib.

within his district at any time, when, in his opinon, the same can be collected. 4728.

Money to be expended upon roads.—It is the duty of the supervisor to expend all money collected by him for the benefit of the roads and highways in his district. 4727.

Supervisor in hamlets.—The trustees of hamlets may appoint, from the electors thereof, a marshal, and may, by ordinance, impose upon him the duties of supervisor; or, they may appoint a supervisor from these electors, other than the marshal. Such supervisor, whether he be the marshal or not, is subject to the orders of these trustees, and may be removed by them and another be appointed by them in his place, at their discretion; and he is subject to the orders of these trustees, and must be paid out of the proper township treasury or treasuries the same compensation allowed to other supervisors. 1700, 1703, as amended, 77 O. L., p. 15.

As to the supervisor's duties in relation to free turnpikes, see section 5, Chapter XX.; and as to other duties already mentioned, see that chapter.

SECTION 3. ROAD TAX,[1] AND SUPERVISOR'S DUTIES CONNECTED THEREWITH.

County levy.—The county commissioners are authorized to make the levy for road and bridge purposes at their March session of each year; and the auditor must place the same upon the tax duplicate, to be collected in the December installment of taxes, except when otherwise provided by law.

Additional road tax.[2]—If the township trustees deem an

[1] See also section 3, page 212, last chapter, and "*Fund for payment of certificates,*" page 247, this chapter.

[2] FOR HAMILTON COUNTY ONLY.[3]

On March 6, 1880, the legislature passed a law applicable to Hamilton county only, relating to such tax. 77 O. L. 38. This act, in so far as it affects townships, is as follows. (The forms, etc.,

[3] In 1888, section 2829 was amended so as to make it also especially applicable to the townships in Hamilton county. It authorizes the trustees of such townships to make an annual levy of additional road tax, not to exceed three mills, of which two mills may be discharged in labor, and one mill shall be placed on the tax duplicate, to be collected in money in the December installment; but such levy can not apply to the property within any incorporated village in such township, the council of which may levy the tax if deemed proper. 85 O. L. 145.

additional road tax necessary, they must determine the per centum to be levied, not exceeding one mill on the

under the similar laws of the following pages are applicable to this also):

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That in lieu of the taxes authorized to be levied and collected in sections 2829 and 2830 of the revised statutes, the trustees of any township in Hamilton county, if they deem an additional road tax necessary, shall determine the percentum to be levied on the taxable property of their township, not to exceed two mills on the dollar, which may be discharged in labor, as hereinafter provided. But where a township shall include an incorporated village, the rate of tax so fixed by said township trustees shall not apply, or be assessed or collected from the property included within the incorporated limits of such village. Said trustees shall certify the same to the county auditor, in writing, on or before the fifteenth day of May in each year; the auditor of the county shall assess the same on all the taxable property in said township, and the same shall be collected in the December installments.

SEC 2. Any person charged with a road tax may discharge the same by labor on the public highway, within the proper time, at the rate of one dollar and fifty cents per day, and a ratable allowance per day for any team and implement furnished by any person under the direction of the supervisor of the proper district, who shall give to such person a certificate, specifying the amount of taxes so paid, and the district and township wherein such labor should be and was performed, which certificate shall in no case be given for any greater sum than the tax charged against such person, and the county treasurer shall receive all such certificates as money in the discharge of said road tax: provided, that when the county commissioners so direct, the supervisor shall write on the margin of his list, opposite to the amount charged against all such as may pay the tax, by money or labor, the word "Paid," and shall return his list, on or before the twenty-fifth day of September of the year in which levied, to the township clerk, who shall write on the margin of the list sent by the auditor, opposite to the amounts charged against each person who may have paid the same in labor or money, as shown by the return of the supervisor, the word

dollar, except in counties where the taxable property is less than ten millions, in which counties they may levy not to exceed two mills on the dollar of the taxable property in their township, which may be discharged in labor as provided below, and in addition to this, one mill on the dollar for the same purpose to be collected in money; and such levy must be certified to the auditor on or before the fifteenth day of May in each year, and the auditor must assess the same on the duplicate for collection in December as other taxes. The tax so levied can not apply to property within any incorporated village in the township, but the village council may make the same or a similar levy if deemed proper. 2829.[1]

Notice to be published.—Immediately after the commissioners and trustees have determined the amounts of tax to be assessed for road purposes in their respective counties and townships, the auditor must give notice, in some newspaper of general circulation in the county, of the per centum on each hundred dollars so determined to be as-

"Paid," and shall forthwith forward the same to the county auditor, who shall charge all such as may remain unpaid, as shown by the returns of the township clerk, upon the tax duplicate of the proper county, and the same shall be collected as other moneys are collected in the December installment by the county treasurer. When such road tax is paid in labor, such labor shall be performed before the first day of October of the year in which levied. All road taxes collected by the county treasurer from any person shall be paid over to the treasurer of the township from which they were collected, and shall be expended on the public roads and in building and repairing bridges in the several sub districts in the township from which the said taxes were collected and the same taxable property is located, under the direction of the trustees of the proper township and supervisors of the several sub-districts in each township. All funds heretofore levied for road purposes, and not expended, shall revert back, as herein named, to the several sub-districts, and be expended under the direction of the trustees of township and supervisors of the several sub-road districts from which the same was collected, as other taxes collected under the provisions of this title.

SEC. 3. This act shall take effect and be in force from and after its passage.

[1]As amended, 85 O. L. 145

sessed in the county and the respective townships, and that said tax may be discharged by labor on the roads, under the direction of the supervisors of the several road districts. 4738.

Lists.—The auditor must also make out a list of the names of the tax-payers, of the amount of road tax each one stands charged with, and transmit the same to the clerk of the proper township. 4738.

Abstract of road tax.—The clerk, immediately upon receipt of the list, must make out and deliver to each supervisor an abstract of the amount of road tax with which each person in his district stands charged. 4739.

Payment of road tax by labor.—Any person charged with road tax may discharge the same by labor upon the public highways of the district, within the time designated by law, at the rate of one dollar and fifty cents per day, and a ratable allowance for any team and implements furnished by any person, under the direction of the supervisor of the proper district. 2830, as amended, April 12, 1880; 77 O. L. 184.[1]

Certificate of payment by labor.—The supervisor must give each person so performing labor a certificate, which certificate must in no case be given for any greater sum than the tax charged against such person, and the certificate must specify the amount of tax thus paid, and the district and township wherein the labor was performed; and the county treasurer must receive all such certificates as money in discharge of the road tax. 2830.

No. 120. Form of Certificate of Payment.

No. . 18 .

I hereby certify that has paid in labor dollars and cents, being in full (*or, if not paid in full, say,* on account) of his road tax for the year 18 , in Road Dis-

[1] Wherever this sec. 2830 is referred to, it is the amended one as here specified.

trict No. township, county, Ohio, and that such labor was performed between the day of and day of .

$. *Supervisor.*

Lists to be returned.—When the county commissioners so direct, the supervisor must write on the margin of his list, opposite to the amount charged against all such as pay by labor or money, the word "Paid," and must return his list on or before the fifth day of September, of the same year, to the clerk of the township. The clerk must then write the word "Paid" on the margin of the list sent him by the auditor, opposite the amount charged to each one who has paid, as shown by the supervisor's list, and forthwith forward the same to the county auditor, who is required to charge all such as remain unpaid, according to the returned list, with the amount due, upon the tax duplicate, and the same is to be collected as other taxes. 2830.

When such road tax is paid in labor, such labor must be performed before the first day of September of the year in which the tax is levied. 2830.

Certain exceptions to this.—In all counties containing either graveled roads or free turnpikes, or both, except Shelby and Allen counties, the time for the payment of the road tax in labor on such roads may extend to the fifteenth of October of the year the tax was levied; but on all other roads in such counties the labor must be performed before the fifteenth of September; and the supervisors in such counties must return their lists before the twenty-fifth of October of the year in which the tax was levied. 2830.[1]

Road tax for cutting down hills, etc.—If the trustees deem an additional road tax necessary, they must determine the per centum to be levied upon the taxable property of their township, not exceeding three mills on the dollar, for cutting down hills, filling low places, and making repairs necessitated by any casualty that may occur in the public

highways of their township. Such tax must not, in any year, exceed the sum of two hundred dollars, unless the question of a greater levy be submitted to a vote of the qualified voters of the township, at a special election called by the trustees for that purpose; if a majority of the qualified voters at such election vote in favor of levying an increased tax for these purposes, the trustees must certify the same to the county auditor, in writing, on or before the first Monday of June in each year, and he must assess the same on the taxable property in the township, not included in any municipal corporation. This tax must be collected in the December installment, and paid out as other taxes, except as provided on page 262. 4737.

Road tax to be paid to township.—All road taxes collected by the county treasurer must be paid over to the treasurer of the township from which the same were collected, and must be expended in building and repairing the public roads and bridges therein, under the direction of the trustees; and all funds heretofore levied for road purposes, and not expended, must be expended by the trustees of the township from which they were collected, as other taxes so levied or expended. 2830. (See, also, pp. 216, 251.)

Extra road tax for improving certain roads.—When two-thirds of the resident freehold tax-payers living on the line of any state road, county road, or turnpike road, file a petition with the auditor of any county for an extra tax for the purpose of constructing, improving, or repairing such road, he must levy such tax, of any amount that may be required, not exceeding six mills on the dollar valuation, in any year, on all the lands and taxable property for any distance on each side of such road not exceeding one mile, and in no case more than half the distance from such road to any other state, county, or free turnpike road running parallel or nearly parallel thereto.[1] 4925.

How long such tax to continue.—When any such tax is levied, it must continue for the term of three years and no

[1] The trustees of any township in Cuyahoga county are authorized to levy a tax of not more than three mills per annum for the express purpose of repairing and improving the roads in the township. 88 Laws, 445.

longer, unless at the expiration of three years the petition or request be renewed; and in that event such tax may be levied for the term of three years longer. 4926.

When such tax may be levied in a township.—The auditor of any county must levy such tax on the lands and property on the line of any such road, in any township, when petitioned for by three-fourths of the resident freehold taxpayers on such road, in such township only. 4927.

Such tax may be repaid in labor, under supervisor's direction.—All taxes arising under the provisions of the three preceding paragraphs may be discharged by labor on the proper road, under the direction of the supervisors within whose jurisdiction such road is located, as provided by law in other cases; and the rate of labor shall be one dollar and fifty cents per day, and a ratable proportion for teams and implements. 4928.

Supervisor to give receipts.—If such taxes be discharged by labor, the supervisors must receipt therefor, as in other cases for like services, and their receipt must be received by the county treasurer in discharge of such tax. 4929.

The form of receipt is the same as given on page 262.

Disbursement of tax when paid in money.—All taxes arising under the provisions of the six preceding paragraphs, and not discharged by labor, must be collected as other taxes by the county treasurer, and by him paid to the treasurers of the townships in which such roads are situate, and must be disbursed by the trustees of such townships upon the roads for which the same were levied; and if any road, for the benefit of which any such tax is so levied, is on a township line, the county treasurer must pay to each of the township treasurers the portion of the taxes collected belonging to his township. 4930.

When territory may be attached to city or village for road purposes.—The trustees of any township in which is situated a city or village, may, in connection with the council of the corporation, attach to such corporation any territory

lying contiguous thereto, for road purposes;[1] and any portion of the territory so attached may be detached by the council with the concurrence of the trustees, and replaced under the control of the township trustees for road purposes. 2662.

Road tax within such attached territory.—All road taxes assessed within any territory attached to a city or village, must be paid over to the treasurer of the corporation, to be expended upon the roads within the attached territory, unless the trustees of the township, and the corporation council, agree upon a different distribution. 2661.

Two days' labor in such territory.—The city or village council have control of the road labor in such attached territory, and may cause it to be expended in such territory or within the corporation, or may cause a portion of the labor due from persons residing in the corporation to be expended within the attached territory. 2658.

Section 4. Settlement of Accounts.

Supervisor must settle with township trustees, when.—At the annual March meeting of the township trustees, they must settle the accounts of the supervisors, and for this purpose the supervisors must attend that meeting. 1458.

Supervisor must report and settle what, etc., at March meeting.—At the annual settlement, the supervisors must also return a full and true list and statement of the names of all persons within their respective districts who have been ordered out to perform the two days' labor as required

[1] Where, under the statutes in force in 1868, contiguous territory was attached to a town corporation for road purposes, a street commissioner of the town might lawfully enter upon and take from the lands situate near a public road needing repair, in such territory, material required and necessary to repair such road, although the land from which the material was taken was in another and different road district. Burrows *v.* Cosler, 33 Ohio St. 567.

See also note 2, page 235.

herein, and of those who have refused or neglected to perform the same; and all fines and forfeitures sued for and recovered under the provisions of this chapter must be paid by the justices of the peace or constable collecting the same, on demand, to the supervisor of the road district wherein the fine or forfeiture accrued; and supervisors must also render an account to the trustees, at the annual settlement, of all money that remains in their hands at the time of settlement, and all judgments that remain unpaid, and the name of the judgment debtor, and the justice before whom such judgments were obtained, with the amount thereof; and the trustees must make such order as to the prosecution of suits by the supervisors of the proper districts, against such delinquents, as in the judgment of the trustees the interest of the township may require. 4727.

To meet the requirements of the law, as well as for convenience of arrangement and to secure a complete report and settlement, the supervisor should divide his report into several heads or parts. These may be as follows:

No. 122. Supervisor's Report and Settlement.

[First.]

List of persons ordered out to perform two days' labor, showing who worked, who paid, who delinquent, who was sued, etc.

Names of persons.	No. of days worked.	No. of days delinquent.	Amount paid in lieu of work.	Amount paid on judgment, fines, etc.	Remarks.
Charles Davis	2				
Elmer Fox	1	1			
George Harris		2			Worthless; no use to sue.
John King		2			Sued; he put in stay. See next list.
Lewis Moore			$3 00		
Nathan Owens	1		1 50	$3 00	Received amount of judgment from , J. P.
Nicholas Mann	2				Planted willows one day.
Laurence DeWitt	1				Removed from district. Gave him receipt.
Etc.					Etc.
Total cash.			$4 50	$3 00	

[Second.]

List of unpaid judgments, showing names of judgment debtors, fines, penalties, etc., unpaid, who tried case, etc.

Names of judgment debtors.	Judgment for two days' labor.			Fines, penalties, etc.			Name of J P. who tried the case.
	Debt.	Costs.	Total.	Fine.	Costs.	Total	
John New	$3 00	$2 70	$5 70				Frank Short.
Robert Smith				$1 00	$4 10	$5 10	Frank Short.
Samuel Tarr	3 00	3 00	6 10	2 00	2 30	4 30	
Etc.							

[Third.]

Statement of moneys received by me as supervisor.

Amount received from , late supervisor.....	$10 25
Total cash road tax collected, as shown by "Abstract of Road Tax" returned to clerk on , 18	89 50
Amount of road tax received from township trustees	25 00
Total in lieu of two days' labor, as shown by "First" hereof.....	4 50
Total judgments, fines, etc., collected, as shown by "First" hereof.....	3 00
Etc., etc.....	
Total receipts.....	$132 25

[Fourth.]

Statement of moneys expended by me as supervisor.

[Give the items of all moneys expended. It is supposed, *of course*, that the supervisor has taken a receipt for every cent expended. These receipts should be numbered in the order of their dates, and are, in this settlement, the supervisor's vouchers for the truth of his statements as to expended money.]

	No. of Voucher.	Amount.
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
Total expenditures.....		$128 75

Total received.....	$132 25
Total expended.....	128 75
Balance on hand.....	$3 50

[Fifth.]

Statement of my personal account.

I was employed in the discharge of my official duties as follows:

Notifying persons to appear and labor.....	... days.
Superintending labor.....	... "
Attending suits.....	... "
Etc., etc.....	... "
Etc., etc.....	... "
Total (say).....	28 days.
Deduct two days for self.....	2 "
Remaining.....	26 days.

Due me, at $1.50 per day, $39.00.

For which I ask an appropriation.

I certify the foregoing to be a correct report of my proceedings, and a true statement of my receipts and expenditures, during my term of office as supervisor since my election in April last.

——— ———

Supervisor.

Settlement.—The trustees must examine the accounts of the supervisors; and if found just and correct, it is their duty to make an order allowing the same, including the account for compensation. 1458.

No. 123. FORM OF ORDER ALLOWING ACCOUNT.

, the supervisor of road district No. , having filed his account for the year ending the day of March, 18 , and it appearing upon examination that said account and the vouchers therewith filed are correct, the same is hereby allowed and settled, including the sum of dollars, the compensation claimed by said for his services, which is hereby ordered paid out of the township treasury.

The supervisor should get a receipt from the trustees for the plows, scrapers, etc., which he returns to them. This receipt may be in form like the one given on page 248, this chapter, except that it should end with these words:

Received the articles above mentioned from , supervisor of road district No. , this day of , 18 .

____ _____

____ _____

____ _____

Township Trustees.

Supervisor to pay to his successor.—All money that may remain in the hands of a supervisor at the time of the annual settlement with the township trustees, must be paid to his successor in office as soon as such successor is elected and qualified, and a receipt taken thereof, and he must deposit the receipt with the township clerk. 4728.

The best and proper plan would be to take two receipts, file one of them as required above, write the word "duplicate" on the other, and file it among his private papers. These receipts may be in form as follows:

No. 124. FORM OF RECEIPT.

ROAD DISTRICT No. , TP., Co., O.

, 18 .

$.

Received of , late supervisor of said district, dollars and cents, belonging to said road district, and remaining in his hands after settling with the township trustees.

____ _____

Supervisor

SECTION 5. COMPENSATION AND PENALTIES.

Penalties against supervisors.—A supervisor who neglects or refuses to perform the several duties enjoined on him

by this chapter, or who, under any pretense whatever, gives or signs any receipt or certificate, purporting to be a receipt or certificate for labor or work performed, or money paid, unless the labor shall have been performed or money paid before the giving or signing of such receipt or certificate, forfeits, for every such offense, not less than five dollars nor more than fifty dollars, to be recovered in an action before a justice of the peace within the township where he resides; and the trustees of the township must prosecute all offenses against the provisions of this paragraph; but if a supervisor conceives himself aggrieved by the judgment of such justice, he may, on giving sufficient security for the payment of costs, appeal to the court of common pleas, which must make such order therein as to it may appear just and reasonable.[1] 4742.

Penalty for embezzlement. — Any supervisor, whether elected or appointed, who embezzles, or converts to his own use, or conceals with such intent, any thing of value that comes into his possession by virtue of his office, or sells any property of the township for his own use, is guilty of embezzlement, and shall be punished as for larceny of the thing embezzled. 6842, 6847.

Compensation.—Every supervisor must be paid for his services, not more than one dollar and fifty cents per day, for the time he is actually employed on the roads; but no supervisor can be allowed, in any one year, more than

[1] In an action against a supervisor to recover the penalty for obstructing a highway, it is competent for him to prove that there was a turnpike road, shorter and better than the altered state road, upon which travelers might and did pass without hinderance or inconvenience. Ingersoll *v.* Herider, 12 Ohio, 542.

No civil action will lie against a supervisor of roads and highways, at the suit of an individual, to recover damages for an injury which he has sustained in consequence of the neglect of the supervisor to keep a bridge within his district in repair. The only remedy for such neglect is a prosecution, under the statute, for the penalty it prescribes. Dunlap *v.* Knapp, 14 Ohio St 64.

twelve dollars, in addition to the remuneration for his two day's labor on the roads, when the number of persons in his district, liable to work on the roads, does not exceed twenty-five; not more than sixteen dollars, when the number so liable is more than twenty-five and less than thirty-five; not more than twenty-five dollars, when the number so liable is not less than thirty-five nor more than fifty; and not more than thirty-five dollars when the number so liable exceeds fifty; but a supervisor that is required, by any law of the state, to repair a turnpike road, or any part thereof, must be allowed not exceeding eight per cent. for the amount of the labor performed under his direction as supervisor, repairing such turnpike or working out the road tax in his district; but in no case can he receive more than one dollar and fifty cents per day. 1533.

The supervisor of any district in which the same is required may make application to the county commissioners for the construction of a county ditch as provided by the statutes. 4450, as amended, 82 Laws, 96.

Office of road supervisor abolished in the counties of Clinton, Green, Madison, and Warren. See Appendix.

CHAPTER XXII.

SCHOOL DISTRICTS.

SECTION 1. TOWNSHIP AND SUB-DISTRICTS.

Classes of school districts.—By the revised statutes, the state is divided into school districts, to be styled, respectively, city districts of the first class, city districts of the second class, village districts, special districts, and township districts.[1] 3885.

Township districts.—Each and every organized township, exclusive of any of its territory included in any city, village, or special district, constitutes a school district, to be styled a township district. 3890.

Sub-districts.—The sub-districts and joint sub-districts existing prior to the passage of the revised statutes continue as before, but subject to the conditions and provisions of the same.[2] 3892.

Transfer of territory from one district to another.—A part

[1] The several provisions of the school legislation of the state should be so construed as to give harmony to our educational system, and secure, as far as practicable, its equal benefits, and reasonable facilities for their enjoyment, to every locality. Cist *v.* The State ex rel., 21 Ohio St. 339.

[2] When an incorporated village is formed within, or to include a material part of, a sub-school district, no portion thereof is, by reason of such incorporation, withdrawn from the school jurisdiction of the township, but the whole continues to be a sub-school district until the actual election or appointment of a separate school board. Cist *v.* The State ex rel., 21 Ohio St. 339.

The term "sub-district," as used in the act of April 9, 1867, in relation to common schools (S. & S. 717), applies exclusively to township or county sub-districts outside the limits of any city or village. Anders *v.* Spargur, 19 Ohio St. 577.

or the whole of any district may be transferred to an adjoining district, by the mutual consent of the boards of education having control of such districts, but no such transfer can take effect until a statement or map, showing the boundaries of the territory transferred, is entered upon the records of such boards, nor, except when the transfer is for the purpose of forming a joint sub-district, until a copy of such statement or map, certified by the clerk of the board making the transfer, is filed with the auditor of the county in which the transferred territory is situate, and any person living in the territory so transferred may appeal to the county commissioners, and the commissioners, at their first regular meeting thereafter, are required to approve or vacate the transfer.[1] 3893.

Board may change sub-districts.—The board of education may cause a map of the township to be prepared as often as they deem necessary, on which to designate the numbers and boundaries of the sub-districts; and they may alter or change such sub-districts at any regular session; but no sub-district should be formed to contain less than sixty resident pupils, unless the board deem it necessary to reduce the number; and any sub-district established by act of the general assembly is to be governed by the same provisions in this respect as other sub-districts, except that it

[1] A township board of education, organized under the general school law of March 14, 1853, has the power, with the consent of the board of education of a town district of the same township, organized under the act of February 21, 1849, to make transfers, to such district, of territory adjacent thereto, and within the township. Canton school *v.* Meyer, 9 Ohio St. 580.

The attaching of the territory composing a sub-district to adjacent sub-districts by a township board of education, is not a consolidation of two or more sub-districts into a new sub-district (but is a change or alteration of the boundaries of the sub-districts—p. 259).

The offices of local directors in the sub-districts to which such territory is attached are not thereby vacated. State ex rel. Attorney-General *v.* Gibbs, 25 Ohio St. 256.

can not be changed or consolidated by the board within three years after its formation unless upon the written consent of two-thirds of the electors residing in the territory affected by such change. 3921.

Consolidation of sub-districts—Whenever the board order the consolidation of two or more sub-districts, or establish a new sub-district in any other way, they must call a special meeting of the electors in the new sub-district for the purpose of electing three directors for the same. Five days' notice of the time and place of such election is to be given, by written or printed notices posted up in three of the most public places of the new sub-district. 3922.

No. 125. Form of Notice.

Election of School Directors.

Notice is hereby given to the qualified electors residing within the limits of the new sub-district formed by the consolidation of the and the sub-districts (*or*, say within the following territory, *giving boundaries*), that an election will be held, at the school-house in , on the day of , 18 , between the hours of 6 o'clock A. M. and 6 o'clock P. M., for the purpose of choosing three directors for the new sub-district; one to serve for the term of one year, one for two years, and one for three years, from the last spring election.

By order of the board of education of township.

(Date.) ——— ———,

Clerk.

How election conducted.—The election is to be conducted as other elections for directors are required to be conducted, and the directors must be chosen to serve one, two, and three years respectively, from the last preceding annual election, and the terms of office of the directors of sub-districts consolidated expire at the time the new sub-district is created. 3922.

SECTION 2. JOINT SUB-DISTRICTS.

How joint sub-districts may be established.—When the better accommodation of scholars makes it desirable to form a joint sub-district, composed of parts of two or more townships, the board of education of the townships interested may, by mutual agreement, at a joint meeting held for the purpose, establish the same and fix the boundaries thereof. 3928.

Proceedings at joint meeting.—A chairman and secretary are required to be chosen at such joint meeting, and it is the duty of the secretary to make a memorandum of the proceedings had thereat, a copy of such memorandum signed by the chairman and secretary is required to be transmitted to the clerk of each of the boards, and by him recorded in his record of proceedings of the board; and the secretary is also required to transmit a like copy of the proceedings to the auditor of each county having territory embraced in the joint sub-district. 3928.[1]

School-house for joint sub-district.—If there is no suitable school-house within the boundries of the joint sub-district, or if there is one not suitably located, the boards at their joint meeting are required to designate a site whereon to erect such building, but if there is a suitable school-house suitably located within the joint sub-district, it is required that the school shall be held therein. 3928.

Local directors of joint sub-district.—The directors of joint sub-districts are to be elected in the same manner and for the same terms of office as the directors of other sub-districts, and required to organize at the same time and in the

[1] Under a former act (Swan's Stat. 845), providing "that the trustees, or a majority of them, in two or more townships, may lay off districts, composed of parts of such townships, when they shall deem it necessary for the accommodation of the inhabitants thereof," it was held that such districts could not be formed without the concurrence of a majority of the trustees of each township. The State ex rel. *v.* Tallmadge Tp., 17 Ohio, 32.

same manner, have the same powers, perform the same duties, and are subject to the same penalties. 3949.

School in joint sub-district, how controlled—The school in a joint sub-district is to be under the control of the board of education of the township in which the school-house is situated, of which board the director who has been elected clerk of the joint sub-district is a member. Such school is to be supported from the school funds of the respective townships having territory in the joint sub-district in proportion to the enumeration of youth; and the board of education having charge of the joint school must make proper estimates of the share of expenses, proportioned upon the number of pupils enumerated in each township, to be paid by each township, and certify the same to the auditor of the county, who is required to add the amount to the annual estimates for contingent fund made by the respective township boards of education, and assess the same as parts of the township estimates. At the time of distributing the school funds, the auditor must transfer the amount so assessed and collected to the township having control of the joint school, and certify to the clerk and treasurer of such township the amount due the same from all sources, which amount must be paid to the treasurer of the board having control of the school. And such board is required to cause to be kept such accounts as will show the funds received from each township, and the disposition thereof, and transmit to the other board or boards interested, at the end of the school year, a statement of such receipts and expenditures. 3961, 3929.

Apportionment when county line divides sub-district—Where a joint sub-district is composed of fractions of two or more counties, such estimate is required to be apportioned to townships as provided above, and the amount apportioned to each township is to be certified to the auditor of the county in which it is situated, and the auditor is to perform the same duties as where the joint sub-district

lies wholly within one county, and the board is to keep and report like accounts of receipts and expenditures. 3962.

Alteration of joint sub-districts.—No joint sub-district, now or hereafter organized, can be dissolved, changed, or altered, except by the concurrent action of the boards of education of all the townships having territory included in the sub-district; provided, however, that when any board of education in a joint sub-district desires to dissolve, change, or alter the same, the board of education desiring such dissolution, change, or alteration, must notify, in writing, the boards of education interested of the time when they will meet to consider the proposed dissolution, change, or alteration. The place of meeting shall be at the school-house in such joint sub-district; but if there be none, then at some convenient place in the vicinity of such joint sub-district. If the joint boards fail to meet, or, having met, can not agree upon a dissolution, change, or alteration (as the case may be), then the board of education desiring such dissolution, or change, or alteration, may appeal to the probate court of the proper county, and the same proceedings are to be had as in case of appeal in the formation of joint sub-districts, so far as applicable, and any joint sub-district established by proceedings in the probate court may be dissolved, changed, or altered as above provided, after the expiration of five years, or the court may dissolve the same at any time upon petition of two-thirds of the voters in the district affected by the change, when the best interests of the schools demand such dissolution, change, or alteration. 3950.[1]

Establishment of joint sub-districts on petition.—It is provided by the revised statutes that joint sub districts may be established on petition in the manner following. 3930.

Electors to petition for same.—Three or more qualified electors, resident of the territory sought to be included therein, may apply, in writing, to the board of education of any township wherein any part of the territory is situate for the creation thereof. 3931.

Petition for, what to contain.—The petition shall describe the territory sought to be included in the joint sub-district; may set forth the reasons requiring the creation thereof, and shall be filed with the clerk of the board of education to which it is addressed. 3932.

Notice of petition.—Upon the filing of such petition such

[1]As amended, 77 Ohio L. 186; 81 Laws, 212; 84 Laws, 117; and 86 Laws, 211.

clerk shall forthwith give notice thereof, in writing, to the members of the board of which he is clerk, which notices shall name a suitable and convenient place, and a day and hour for the boards to meet; he shall also transmit a like notice, forthwith, to the clerks of all other boards of education having jurisdiction over any of the territory sought to be affected; and such clerks, upon the receipt of such notice, shall, in like manner, give notice forthwith of the filing of such petition, and of the time and place of meeting, to each member of their respective boards. 3933.

Hearing of petition and appeal to probate court.—It shall be the duty of such boards to meet and consider the petition within thirty days from the time the same is filed; but if they do not do so within sixty days from such time, or, having met, failed to establish the joint sub-district, or determine not to establish it, three or more electors of the territory sought to be included therein, may file a petition or remonstrance for or against the same with the probate judge of the county; and if the territory sought to be included therein is situate in two or more counties, the petition may be filed with the probate judge of either county.[1] 3934.

Bond to be given in probate court.—The petitioners shall also file with the probate judge the undertaking of one or more of their number, with security to the satisfaction of the judge, in the sum of one hundred dollars, conditioned that the petitioners will pay all the costs of the proceeding if a joint sub-district be not established thereby. 3935.

Time to be fixed for meeting of commissioners.—Upon the filing of such petition and undertaking, the judge shall fix a time, not more than sixty days thereafter, and a place, which shall be the school-house upon the territory, if there is one thereon, and if there is more than one shool-house thereon, then the house last built, and if there is no school-house thereon, then some convenient place within the territory, for the meeting of the commissioners hereinafter directed to be appointed. 3936.

Notice to be published.—The judge shall thereupon cause

[1] As amended 78 Ohio Laws, 8.

to be published, for four consecutive weeks, in two newspapers of opposite politics, printed and of general circulation in the county where the petition is filed, notice of the filing of such petition, and of the time and place of meeting of the commissioners. 3937.

Appointment of commissioners.—The judge shall also make an order appointing three judicious, disinterested men of the county, and not residents of either of the townships to be effected, to be commissioners, and to act in the premises; if a person so appointed die, or fail for any cause to be present and to act, or if he give notice of his inability to serve, the judge shall, forthwith, by order, appoint another in his stead, who may act as if he had been originally appointed; and the judge shall deliver a copy of the petition and his order to the commissioners, and shall instruct them in the law applicable to such proceedings. 3938.

Oath and meeting of commissioners.—The commissioners shall take an oath to discharge faithfully the duties required by this chapter, according to the best of their knowledge and understanding, and shall meet at the time and place named in the published notice, may examine witnesses under oath, which may be administered by one of their number, and consider and determine the question whether a joint sub-district ought to be established. 3939.

Clerks of boards of education to be present.—The clerks of the several boards of education interested shall be present at the meeting of the commissioners, and have with them the plats of the several townships, with the lines of the sub-districts marked thereon, and such other papers and documents as will serve to inform the commissioners, and give them a correct idea of the wants of the petitioners. 3940.

Report of commissioners.—The commissioners shall report, in writing, to the probate judge—

1. Whether or not a joint sub-district ought to be established, and their reason therefor.

2. If they find in favor of the establishment of a joint sub-district, they shall give the lines and a plat thereof; they may also change the line of the sub-district proposed in the petition, by including therein other territory, or excluding territory included therein, or both; and if there is no suitable school-house within such boundaries, or, if there is one, but is not suitably located, they shall designate a site whereon to erect such building. 3941.

Effect of report.—The report of the commissioners, if against the establishment of a joint sub-district, shall be a bar to any proceeding to establish a joint sub-district out of any of the territory described in the petition for three years; and if the report be in favor of the establishment of a joint sub-district it shall be final, unless set aside by the probate court for fraud. 3942.

Costs, when report is against petitioners.—If the report be against the establishment of a joint sub-district, the judge shall render judgment against the petitioners for all the costs of the proceedings; and the commissioners and the judge shall receive the same fees as are authorized to be charged for like services in proceedings to establish roads, and such other fees as are authorized by law. 3943.

Proceedings when report is in favor of petitioners.—If the report be in favor of the establishment of a joint sub-district the judge shall make an entry confirming the same; and a certified copy of the report, including the plat and his order, shall be delivered to the clerk of the board of education of each township interested therein, and thereafter such joint sub-district shall be fully established, and shall be governed and controlled in the manner as joint sub-districts otherwise established. 3944.

Costs when report is in favor of petitioners.—In such case the judge shall tax the costs of the proceedings to the board of education of the several townships interested, in such proportion as he may deem just and equitable, and certify the same to the clerks of such boards; and the boards shall be liable therefor, and at the first regular or

special meeting of each thereafter payment of the amount so taxed to it shall be ordered. 3945.

Petition for new sub-district, special district, or change of boundaries.—A petition may, in like manner, be filed with the clerk of the board of education of any township praying for the creation of an additional sub-district, or for changing the lines of sub-districts, or for the creation of a special school district, or for changing the lines of special or village districts, and adjoining sub-districts; but when a special or village district is interested in such proposed change, the petition may be filed with the clerk of the township board, or the clerk of the board of education of such special or village district; and when any such lines have been so changed, they shall not be altered by any board or boards of education until after the expiration of three years, except upon the written consent of two-thirds of the electors residing within the territory affected by the change. 3946.

Proceedings on petition.—Such petition may be filed with the clerk of the board of education of the township, or, if the changes sought by the petition affect territory in more than one township, with the clerk of the board of education of either township; and, upon the filing thereof, the members of the board or boards interested shall be notified, as provided in section 3933 of the revised statutes. See above, "notice of petition." 3947.

Proceedings on petition, and appeal to probate court.—It shall be the duty of such board or boards to meet and consider the petition within thirty days from the time the same is filed; but on failure to do so within sixty days from such time, or, if the board or boards meet, and grant or fail to grant the prayer of the petitioners, a petition or remonstance may be filed with the probate judge of the county by either party, as above provided in the case of joint sub-distric s, and thereafter such proceedings may be had thereon, and they shall have the same effect as are herein provided for the formation of joint sub-districts.[1] 3948.

[1] *As amended* 78 Ohio Laws. 8.

SECTION 3. SPECIAL DISTRICTS.

Number of board, etc.—The board of education in all special districts consists of three members residing in the district, and having the qualifications of electors therein; but when the electors of the district desire that the board shall consist of six members, they may make the change in the manner provided for village districts. See the next section of this chapter. 3923.

Election of members.—One judicious and competent person is required to be elected annually, in all special districts, by the qualified electors thereof, on the second Monday of April, at the usual time and place of holding school elections, to serve as a member of the board of education for three years, from the first Monday succeeding his election and until his successor is elected and qualified. 3924.

Notice of election.—It is the duty of the clerk of the special district to post up written or printed notices, in three or more conspicuous places in the district, at least six days prior to the day of election, designating the day and hour of opening and closing the election. 3925.

Manner of conducting the election.—It is required that the election shall not continue a less time than two hours. When assembled at the time and place specified in the notice, the electors should choose a chairman and secretary and proceed to elect a member of the board by ballot. The secretary should keep a poll-book and tally-sheet, and return the same, within five days after the election, to the board of education, duly signed and certified. 3908, 3910, 3925.

How organization of special school district abandoned.—Whenever the electors of a special or village district desire to abandon their organization and become a part of the township district, they may do so in the following manner: Written or printed notices must be posted, in at least five of the most public places of the district, at least ten days before the election, signed by a majority of the board of education

of the special district, or by one of the board, and at least six resident electors of the district, requesting the qualified electors thereof to assemble on a day and hour, and at a place therein designated, then and there to vote for or against the proposed change. The electors, when assembled at the time and place designated in the notices, are required to appoint a chairman and two clerks to be judges of the election, which must continue at least two hours. The electors in favor of the change are to have written or printed upon their ballots "School—change," and those opposed thereto, the words "School—no change." The judges are required to make due return of the election to the board of education of the special district within five days; and if a majority of the votes cast be found in favor of the change, the special district board must immediately certify the fact to the board of education of the township. 3926.[1]

Township board to assume jurisdiction.—Upon the receipt of a certificate that the electors of a special district have voted in favor of abandoning their organization, it is the duty of the board of education of the township to assume jurisdiction of the territory included in the special district, and thereafter treat such district as a sub-district of the township district; and in such case it is the duty of all officers of the special district to transfer any school funds or property in their possession to the township board, and the offices of such officers then cease to exist, except that the special district board, if consisting of three members only, continue to act as the directors of the sub-district so created, each to serve the remainder of the term for which he was elected to the board of the special district. If the special or village district making such changes has a board of six members, it must, within ten days after making the change, elect a board of directors of three members, one to serve for one, one for two, and one for three years from the second Monday of April following, and annually thereafter, as provided for the election of directors in other sub-districts. (See page 300.) 3926, 3827.[1]

Property, indebtedness, etc., of special district to be provided for.—The clerk of the special district so abandoned is required to deliver to the clerk of the township board all books and papers of the special district, and to notify the county auditor in writing of the abandonment of the organization, the treasurer of the special district is required to deliver to the treasurer of the township board all books, papers, and moneys in his possession belonging to the dis-

[1] As amended, 88 Laws, 297.

trict. The township board is required to complete any unfinished business of the special district. Any debt of the special district is to be paid out of the money transferred by the treasurer thereof to the treasurer of the township board, and moneys arising from taxes levied by the special district board, and if such funds are insufficient therefor the remainder is required to be paid by a special tax upon the property of the sub-district so created. 3927.

Election in new special district.—In special districts hereafter established, the first election for members of the board is to be held within twenty days after such establishment, at least five days' previous notice of which, stating the time and place of meeting, and signed by at least three electors of the district, is required to be given by posting copies of the same in three of the most conspicuous places in the district. At the meeting a chairman and clerk are required to be chosen and three members of the board to be elected, one to serve until the third Monday of April after his election, one for one year, and one for two years from said third Monday, and each to serve until the election and qualification of his successor. 3924.

SECTION 4. TOWNSHIPS ORGANIZED AS VILLAGE SCHOOL DISTRICTS.

Townships may adopt provisions of law for village districts.—Any township board of education may, and on petition of one-third of the electors of such township, are required to submit, at the first regular election of township officers thereafter, the question whether the township school district shall be governed by the provisions of law relating to village school districts. 3894.

Notice of vote.—Notice of the intention to submit such question is to be given by posting up written or printed notices in ten or more public places in the township, at least twenty days prior to the election. 3894.

[1] As amended, 88 Laws, 297.

No. 126. FORM OF NOTICE.

To the Qualified Electors of Township, County Ohio:

You are hereby notified that at the annual election for township officers, to be held on Monday, the day of April, 18 , a vote will be taken to decide whether or not this township school district shall be governed by the provisions of the law relating to village school districts.

By order of the board of education of township.

(Date.) _____

Clerk.

How election conducted.— The election is to be conducted by the township trustees, with separate ballot-box and poll-books. The ballots used at such election must have written or printed on them "School district," or "No school district." The trustees are required to return one of the poll-books and tally-sheets to the township clerk, and the other to the state commissioner of schools, within five days after such election. 3895.

How board organized after change.—At the annual organization of the township board after the election, if it be found that a majority of the votes cast were in favor of the change, the board must select by vote or lot, six persons to serve as a township board of education—two of whom are to serve for three years, two for two years, and two for one year; and the board is thereafter to be governed by the provisions relating to the board of education in village school districts. 3896.

Clerk to give notice of election.—The clerks of village boards of education must publish ten days' notice of the annual election of members of the board in a newspaper of general circulation in the township or village, or by written notices posted in five public places in the township, in which are to be specified the time and place of meeting, and the number of members to be elected. 3909

No. 127. Form of Notice.

To the Qualified Electors of the School District:

You are hereby notified that, on Monday, the day of April, 18 , an election will be held at , between the hours of six o'clock A. M. and six o'clock P. M., to choose two members of the board of education of said district, to serve for a term of three years.

By order of the board of education of .

(Date.) ——— ———

Clerk.

Election of members of board.—The election for members of the board after the first election is to be held on the first Monday of April, between six o'clock A. M. and six o'clock P. M., at the usual place of holding school meetings. When assembled, the electors should appoint a chairman and secretary, and proceed to elect by ballot two members of the board, to serve for three years from the third Monday of April after their election, and until their successors are elected and qualified. 3908.

Poll-book of election.—The secretary of the meeting must keep a poll-book and tally-sheet, and return them, duly certified, to the clerk of the board of education, within five days after the election. 3910.

Vacancies in board.—Vacancies in such boards of education are to be filled by the board itself, until the next election, provided the vacancy occurs more than fifteen days before the election. At the ensuing election, a member should be elected to fill the unexpired term. 3981.

Clerk and treasurer.—Village boards of education elect their own clerk and treasurer, who are required to give the same bonds and perform the same duties as clerks and treasurers of township boards. The board may fix the compensation of those officers, but that of the treasurer may not exceed one per cent. of his disbursements. 3979, 4042, 4056.

No directors.—As there are no directors in villages, the duties of those officers are to be performed by, or under the direction of the board.

Election of board in village districts.—If any incorporated village has been or hereafter may be created, the same may be organized a village district as follows: Written or printed notices, signed by not less than five electors residing within the village, must be posted in at least five of the most public places of the village, requesting the electors thereof to meet for the purpose of electing a board of education for such proposed village district, on a day and at an hour and place designated in the notices, which must be posted at least ten days prior to the day designated in them for the meeting. 3913.

No. 128. Form of Notice.

To the Electors of the Incorporated Village of :

The undersigned electors, residing in said village, respectfully request you to meet with them, at the house, in , on the day of , 18 , at o'clock A. M., for the purpose of electing a board of education for said village.

(Date.)

____ _____
____ _____
____ _____
____ _____
____ _____

Conduct of election.—The electors so assembled are required to appoint a chairman and two clerks, to be judges of the election, and to choose six members of the board of education—two to serve for one year, two for two years, and two for three years, from the preceding annual school election; or in case the election is held on the day of the regular annual school election, then they are to hold office for one, two, and three years from the third Monday of April. 3913.

Organization of board.—The board of education so elected are required to organize in the same manner as township boards. In case the election is held on the day of the annual election in village districts the board should organize on the third Monday of April; but if the election be held at any other time, the board is required to organize on the Monday next after the election. 3914.

Powers and duties of board.—The general powers and duties of boards of education are, with the exceptions above mentioned, the same, whether they are organized under that portion of the statute relating to village school districts, or that portion pertaining to township districts, and they will be found herein set forth.

Special high-school districts.—For the purpose of providing schools of higher grade, any township district, village and special district within such township, may be united and organized as a special district for high school purposes, by a vote of the electors of the township at any general election. 4009*a*, 82 Laws, 128.

Vote on union of districts for high-school purposes.—Any ten or more of the electors of any township having a village district or special district within its limits, may give ten days notice before any general election that a separate vote will be taken at the next general election in said township, in each of the districts proposed to be united, on the proposition to unite such districts or any two of them for high school purposes. The notice must be published in a newspaper published and of general circulation in the township, and be conspicuously posted in at least three public places in each district interested. The form of ballot it is provided shall be: "Special district for high-school purposes, yes," or special district for "high-school purposes, no;" and if a majority of the votes cast on the proposition, in each district, be in the affirmative, such districts shall thereafter be united for high-school purposes; and the judges of the election must certify to the court of common pleas of the county the result of the election, to be placed upon the journal of the court; whereupon it is made the duty of the court to appoint three judicious persons, one for one year, one for two years, and one for three years, residents of the township, as the board of education of such special high-school district. One member of such board is to be elected each year thereafter, to hold for three years, and until his successor is elected. Such board has all the powers of other boards of education. 4009*b*, 82 Laws, 128.

special meeting of each thereafter payment of the amount so taxed to it shall be ordered. 3945.

Petition for new sub-district, special district, or change of boundaries.—A petition may, in like manner, be filed with the clerk of the board of education of any township praying for the creation of an additional sub-district, or for changing the lines of sub-districts, or for the creation of a special school district, or for changing the lines of special or village districts, and adjoining sub-districts; but when a special or village district is interested in such proposed change, the petition may be filed with the clerk of the township board, or the clerk of the board of education of such special or village district; and when any such lines have been so changed, they shall not be altered by any board or boards of education until after the expiration of three years, except upon the written consent of two-thirds of the electors residing within the territory affected by the change. 3946.

Proceedings on petition.—Such petition may be filed with the clerk of the board of education of the township, or, if the changes sought by the petition affect territory in more than one township, with the clerk of the board of education of either township; and, upon the filing thereof, the members of the board or boards interested shall be notified, as provided in section 3933 of the revised statutes. See above, "notice of petition." 3947.

Proceedings on petition, and appeal to probate court.—It shall be the duty of such board or boards to meet and consider the petition within thirty days from the time the same is filed; but on failure to do so within sixty days from such time, or, if the board or boards meet, and grant or fail to grant the prayer of the petitioners, a petition or remonstance may be filed with the probate judge of the county by either party, as above provided in the case of joint sub-distric s, and thereafter such proceedings may be had thereon, and they shall have the same effect as are herein provided for the formation of joint sub-districts.[1] 3948.

[1] As amended 78 Ohio Laws. 8.

SECTION 3. SPECIAL DISTRICTS.

Number of board, etc.—The board of education in all special districts consists of three members residing in the district, and having the qualifications of electors therein; but when the electors of the district desire that the board shall consist of six members, they may make the change in the manner provided for village districts. See the next section of this chapter. 3923.

Election of members.—One judicious and competent person is required to be elected annually, in all special districts, by the qualified electors thereof, on the second Monday of April, at the usual time and place of holding school elections, to serve as a member of the board of education for three years, from the first Monday succeeding his election and until his successor is elected and qualified. 3924.

Notice of election.—It is the duty of the clerk of the special district to post up written or printed notices, in three or more conspicuous places in the district, at least six days prior to the day of election, designating the day and hour of opening and closing the election. 3925.

Manner of conducting the election.—It is required that the election shall not continue a less time than two hours. When assembled at the time and place specified in the notice, the electors should choose a chairman and secretary and proceed to elect a member of the board by ballot. The secretary should keep a poll-book and tally-sheet, and return the same, within five days after the election, to the board of education, duly signed and certified. 3908, 3910, 3925.

How organization of special school district abandoned.—Whenever the electors of a special or village district desire to abandon their organization and become a part of the township district, they may do so in the following manner: Written or printed notices must be posted, in at least five of the most public places of the district, at least ten days before the election, signed by a majority of the board of education

of the special district, or by one of the board, and at least six resident electors of the district, requesting the qualified electors thereof to assemble on a day and hour, and at a place therein designated, then and there to vote for or against the proposed change. The electors, when assembled at the time and place designated in the notices, are required to appoint a chairman and two clerks to be judges of the election, which must continue at least two hours. The electors in favor of the change are to have written or printed upon their ballots "School—change," and those opposed thereto, the words "School—no change." The judges are required to make due return of the election to the board of education of the special district within five days; and if a majority of the votes cast be found in favor of the change, the special district board must immediately certify the fact to the board of education of the township. 3926.[1]

Township board to assume jurisdiction.—Upon the receipt of a certificate that the electors of a special district have voted in favor of abandoning their organization, it is the duty of the board of education of the township to assume jurisdiction of the territory included in the special district, and thereafter treat such district as a sub-district of the township district; and in such case it is the duty of all officers of the special district to transfer any school funds or property in their possession to the township board, and the offices of such officers then cease to exist, except that the special district board, if consisting of three members only, continue to act as the directors of the sub-district so created, each to serve the remainder of the term for which he was elected to the board of the special district. If the special or village district making such changes has a board of six members, it must, within ten days after making the change, elect a board of directors of three members, one to serve for one, one for two, and one for three years from the second Monday of April following, and annually thereafter, as provided for the election of directors in other sub-districts. (See page 300.) 3926, 3827.[1]

Property, indebtedness, etc., of special district to be provided for.—The clerk of the special district so abandoned is required to deliver to the clerk of the township board all books and papers of the special district, and to notify the county auditor in writing of the abandonment of the organization, the treasurer of the special district is required to deliver to the treasurer of the township board all books, papers, and moneys in his possession belonging to the dis-

[1] As amended, 88 Laws, 297.

trict. The township board is required to complete any unfinished business of the special district. Any debt of the special district is to be paid out of the money transferred by the treasurer thereof to the treasurer of the township board, and moneys arising from taxes levied by the special district board, and if such funds are insufficient therefor the remainder is required to be paid by a special tax upon the property of the sub-district so created. 3927.

Election in new special district.—In special districts hereafter established, the first election for members of the board is to be held within twenty days after such establishment, at least five days' previous notice of which, stating the time and place of meeting, and signed by at least three electors of the district, is required to be given by posting copies of the same in three of the most conspicuous places in the district. At the meeting a chairman and clerk are required to be chosen and three members of the board to be elected, one to serve until the third Monday of April after his election, one for one year, and one for two years from said third Monday, and each to serve until the election and qualification of his successor. 3924.

SECTION 4. TOWNSHIPS ORGANIZED AS VILLAGE SCHOOL DISTRICTS.

Townships may adopt provisions of law for village districts.—Any township board of education may, and on petition of one-third of the electors of such township, are required to submit, at the first regular election of township officers thereafter, the question whether the township school district shall be governed by the provisions of law relating to village school districts. 3894.

Notice of vote.—Notice of the intention to submit such question is to be given by posting up written or printed notices in ten or more public places in the township, at least twenty days prior to the election. 3894.

[1] As amended, 88 Laws, 297.

No. 126. Form of Notice.

To the Qualified Electors of Township, County Ohio:

You are hereby notified that at the annual election for township officers, to be held on Monday, the day of April, 18 , a vote will be taken to decide whether or not this township school district shall be governed by the provisions of the law relating to village school districts.

By order of the board of education of township.

(Date.) ——— ———

Clerk.

How election conducted.— The election is to be conducted by the township trustees, with separate ballot-box and poll-books. The ballots used at such election must have written or printed on them "School district," or "No school district." The trustees are required to return one of the poll-books and tally-sheets to the township clerk, and the other to the state commissioner of schools, within five days after such election. 3895.

How board organized after change.—At the annual organization of the township board after the election, if it be found that a majority of the votes cast were in favor of the change, the board must select by vote or lot, six persons to serve as a township board of education—two of whom are to serve for three years, two for two years, and two for one year; and the board is thereafter to be governed by the provisions relating to the board of education in village school districts. 3896.

Clerk to give notice of election.—The clerks of village boards of education must publish ten days' notice of the annual election of members of the board in a newspaper of general circulation in the township or village, or by written notices posted in five public places in the township, in which are to be specified the time and place of meeting, and the number of members to be elected. 3909

No. 127. Form of Notice.

To the Qualified Electors of the School District:

You are hereby notified that, on Monday, the day of April, 18 , an election will be held at , between the hours of six o'clock A. M. and six o'clock P. M., to choose two members of the board of education of said district, to serve for a term of three years.

By order of the board of education of .

(Date.) ——— ———

Clerk.

Election of members of board.—The election for members of the board after the first election is to be held on the first Monday of April, between six o'clock A. M. and six o'clock P. M., at the usual place of holding school meetings. When assembled, the electors should appoint a chairman and secretary, and proceed to elect by ballot two members of the board, to serve for three years from the third Monday of April after their election, and until their successors are elected and qualified. 3908.

Poll-book of election.—The secretary of the meeting must keep a poll-book and tally-sheet, and return them, duly certified, to the clerk of the board of education, within five days after the election. 3910.

Vacancies in board.—Vacancies in such boards of education are to be filled by the board itself, until the next election, provided the vacancy occurs more than fifteen days before the election. At the ensuing election, a member should be elected to fill the unexpired term. 3981.

Clerk and treasurer.—Village boards of education elect their own clerk and treasurer, who are required to give the same bonds and perform the same duties as clerks and treasurers of township boards. The board may fix the compensation of those officers, but that of the treasurer may not exceed one per cent. of his disbursements. 3979, 4042, 4056.

No directors.—As there are no directors in villages, the duties of those officers are to be performed by, or under the direction of the board.

Election of board in village districts.—If any incorporated village has been or hereafter may be created, the same may be organized a village district as follows: Written or printed notices, signed by not less than five electors residing within the village, must be posted in at least five of the most public places of the village, requesting the electors thereof to meet for the purpose of electing a board of education for such proposed village district, on a day and at an hour and place designated in the notices, which must be posted at least ten days prior to the day designated in them for the meeting. 3913.

No. 128. Form of Notice.

To the Electors of the Incorporated Village of :

The undersigned electors, residing in said village, respectfully request you to meet with them, at the house, in , on the day of , 18 , at o'clock A. M., for the purpose of electing a board of education for said village.

(Date.)

____ ____

____ ____

____ ____

____ ____

____ ____

Conduct of election.—The electors so assembled are required to appoint a chairman and two clerks, to be judges of the election, and to choose six members of the board of education—two to serve for one year, two for two years, and two for three years, from the preceding annual school election; or in case the election is held on the day of the regular annual school election, then they are to hold office for one, two, and three years from the third Monday of April. 3913.

Organization of board.—The board of education so elected are required to organize in the same manner as township boards. In case the election is held on the day of the annual election in village districts the board should organize on the third Monday of April; but if the election be held at any other time, the board is required to organize on the Monday next after the election. 3914.

Powers and duties of board.—The general powers and duties of boards of education are, with the exceptions above mentioned, the same, whether they are organized under that portion of the statute relating to village school districts, or that portion pertaining to township districts, and they will be found herein set forth.

Special high-school districts.—For the purpose of providing schools of higher grade, any township district, village and special district within such township, may be united and organized as a special district for high school purposes, by a vote of the electors of the township at any general election. 4009*a*, 82 Laws, 128.

Vote on union of districts for high-school purposes.—Any ten or more of the electors of any township having a village district or special district within its limits, may give ten days notice before any general election that a separate vote will be taken at the next general election in said township, in each of the districts proposed to be united, on the proposition to unite such districts or any two of them for high school purposes. The notice must be published in a newspaper published and of general circulation in the township, and be conspicuously posted in at least three public places in each district interested. The form of ballot it is provided shall be: "Special district for high-school purposes, yes," or special district for "high-school purposes, no;" and if a majority of the votes cast on the proposition, in each district, be in the affirmative, such districts shall thereafter be united for high-school purposes; and the judges of the election must certify to the court of common pleas of the county the result of the election, to be placed upon the journal of the court; whereupon it is made the duty of the court to appoint three judicious persons, one for one year, one for two years, and one for three years, residents of the township, as the board of education of such special high-school district. One member of such board is to be elected each year thereafter, to hold for three years, and until his successor is elected. Such board has all the powers of other boards of education. 4009*b*, 82 Laws, 128.

CHAPTER XXIII.

SCHOOL BOARDS.

SECTION 1. THE DIRECTORS.

Election and term of office.—In each sub-district, and in each township not divided into sub-districts, there is to be elected by ballot, on the second Monday of April annually, by the qualified electors thereof, one competent person, having the qualifications of an elector therein, to be styled director, and whose term of office continues for three years from his election, and until his successor is elected and qualified. 3916.

Notices of election.—It is the duty of the clerk of each sub-district to post up written or printed notices in three or more conspicuous places in the sub-district, at least six days prior to the day of the election, designating the day and hour of opening and closing such election. 3917.

No. 129. FORM OF NOTICE.

The qualified electors of the sub-school district of township will take notice that an election to choose one director of schools for said sub-district will be held at the house, in , on Monday, the day of April, 18 , beginning at o'clock A. M. and ending at o'clock P. M. of said day.

(Date.)

Clerk of Sub-district.

Oath of office.—Such director, within five days after his election, must take an oath or affirmation to support the constitution of the United States and of the State of Ohio, and faithfully and impartially to discharge the duties of

his office, which oath or affirmation may be administered by any director of any sub-district of the township or by the clerk thereof. 3916.

No. 130. FORM OF OFFICIAL OATH.

State of Ohio, *County,* *Township:*

Before me , personally came , who, being sworn according to law, says that he will support the constitution of the United States and of the State of Ohio, and that he will faithfully and impartially discharge the duties of his office as director of schools, in sub-district , of township, during his continuance in office.

Sworn to, and subscribed before me, this day of , 18 .

Clerk of *Township*

Election, when and how.—The election for director is to be held at the usual place of holding school meetings. The meeting for that purpose should organize by the appointment of a chairman and secretary, to act as judges of the election. The secretary must keep a poll-book and tally sheet, which are required to be signed by the judges; and the secretary is to deliver them to the clerk of the township within eight days after the election. In case of a tie vote, the judges must decide the election by lot. 3917,[1] 3978.

Organization of local directors.—It is the duty of the directors to meet within five days after the second Monday of April of each year, and organize by the appointment of one of their number clerk of the sub-district. The clerk so chosen is required to preside at the official meetings of the directors, and must record their proceedings in a book provided for that purpose, together with the minutes of the proceedings of the annual school meetings held in the sub-district by the qualified electors thereof, all of which

[1]As amended March 16, 1880. 77 Ohio L. 63.

records are to be subscribed by such clerk, and held and taken as public records. 3918.

Quorum, meetings, etc.—A majority of the directors constitute a quorum, and they may meet as they think proper and fill any vacancy in the office of clerk which may occur, or, in case of the absence of the clerk, either of the other directors may act temporarily in his place. But no business can be transacted at a meeting, due notice of which has not been given to each of the directors, either personally or by written notice left at his usual place of residence or business. 3918.

Vacancies, how filled.—In case the electors fail to elect a director at the annual election, or in case of a vacancy arising from any other cause, any three electors of the sub-district may call a special meeting of the electors thereof, within ten days after the occurrence of the vacancy or failure to elect, for the purpose of electing a director, on giving five days' notice of the time and place of holding such election, by posting the same in three of the most public places in the sub-district; and the local director so elected may hold office for the unexpired time to be filled and until his successor is elected and qualified. In case of a failure to hold either a general or special election, it is the duty of the township clerk to appoint some suitable resident of the sub-district to act as director until the next election and until his successor is elected and qualified. 3919.

Section 2. The Board of Education.

Who constitute.—The board of education of each township consists of the township clerk and the directors who have been appointed clerks of the respective sub-districts in the township. In townships not divided into sub-districts, or not divided into more than two sub-districts, the board consists of all the directors and the township clerk.

The clerk of the township is to act as clerk of the board, but is not entitled to vote.[1] 3915.

Organization.—The board of education is to organize on the third Monday of April in each year, by appointing one of their number president, and in case of the absence of the township clerk, by appointing one of their number as clerk *pro tempore*, who must record their proceedings in a book provided for the purpose, which then becomes a public record. The record of the proceedings at each meeting is to be read at the next meeting, corrected if necessary, and approved, and the approval noted in the proceedings; and after such approval the president is required to sign the record, and the clerk to attest the same. 3980;[2] 3984.

Meetings.—It is required that the board shall hold regular sessions on the third Monday of April and the last Monday of August of each year, at the usual place of holding township elections, or as near thereto as convenient, and they may then adjourn from time to time, or may hold special meetings when it is deemed necessary. Special meetings may be called by the township clerk, by the president of the board, or by two or more members; but each member must be notified thereof, either personally or by a written notice left at his residence or usual place of business. 3920.[3]

President and clerk pro tem.—If at any meeting of the board either the president or clerk is absent, the members present are required to choose one of their number to serve in his place *pro tempore*, and if both are absent, both places

[1] The board of education is made, by the statute, a body corporate, and the contracting of a debt by the board, and the directing the issuing of an order to pay it, are corporate acts which can not be performed by the individual members of the board acting separately. The State ex rel. *v.* Liberty Tp., 22 Ohio St. 144.

For a mere error of judgment in the discharge of their duties, without wrongful motive, an action can not be maintained against school directors. Stewart *v.* Southard, 17 Ohio, 402.

[2] As amended, 84 Laws, 212.

[3] As amended, 86 Laws, 346.

must be so filled; but on the appearance of either at the meeting, after his place has been so filled, he is required to immediately assume the duties of his office. 3983.

Corporate powers of.—All boards of education are declared bodies politic and corporate, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of property, both real and personal, and taking and holding in trust for the use and benefit of such districts any grant or devise of land, and any donation or bequest of money or other personal property, and of exercising such other powers and having such other privileges as are conferred by law. 3971.[1]

School property vested in.—All property, real or personal, heretofore vested in, and which is now held by any board of education, or town or city council, for the use of public or common schools in any district, is vested in the proper board of education having jurisdiction under the law.[2] 3972.

Sales of properey by board.—All sales of property, real or personal, made by the board, must be by public auction (if the property exceed three hundred dollars in value), and thirty days' notice of the time and place of the sale must be given in some newspaper of general circulation in the township, or by posting notices in five of the most public places therein. The board may also exchange real estate with any municipal corporation, by a concurring vote of the council and board, whenever it is found mutually beneficial to do so. 80 Ohio Laws, 36. 3971.[3]

No. 131. Form of Notice of Sale.

Public sale of School Property.

Notice is hereby given that, on , the day of

[1] See 80 Ohio Laws, 36.

[2] Under the act of May 1, 1873 (70 Ohio L. 195), for the reorganization and maintenance of common schools, the corporate boards of education therein provided for succeed to all existing rights of action in relation to the common school property and funds, which were theretofore vested, by previous legislation, in other agencies to whose control such property and funds had been confided. Crofton *v.* Board of Education of Cincinnati, 26 Ohio St. 571.

[3] As amended, 85 Ohio Laws, 133.

, 18 , there will be sold, at public auction, on the premises, the following described real estate, viz: (*here describe the property by metes and bounds.*) Also, at the same time and place, the following personal property will likewise be offered for sale, viz: (one dozen school-desks, in good order; one half-dozen cane seat-chairs; one stove, etc.) To be sold to the highest bidder; the personal property for cash—the real estate for one-third cash, the remainder in two equal payments of one and two years from date of sale, with interest. The deferred payments to be secured by notes and mortgage on the premises.

By order of the board of education of township.

(Date.)

Clerk to Board of Education.

Private sale, when had.—If any real estate has been twice offered at public auction and not sold, the board may then proceed to sell it at private sale, either as an entire tract, or in parcels, as they deem best. 85 Ohio Laws, 133.

Conveyances, how executed, and contracts, how made.—All conveyances made by a board of education must be executed by the president and clerk thereof; and it is unlawful for any member of such board to have any pecuniary interest, either direct or indirect, in any contract of said board, or to be employed in any manner for compensation by the board, except as clerk or treasurer, and no contract will be binding upon the board unless made, or authorized to be made, at a regular or special meeting of the board.[1] 3974.

[1] An agreement by members of a township board of education, acting in their individual capacity, to purchase from another person apparatus for the schools of the township, and to ratify said contract of purchase at the next meeting of the board, is contrary to public policy, and therefore illegal and void (and not enforceable against the members as individuals). McCortle *v.* Bates, 29 Ohio St. 419.

Township school directors have no power to delegate the employment of teachers to any other persons nor provide for their payment, and a contract with a teacher that he shall employ and pay an assistant, if one is necessary, is illegal and void State ex rel. Werden *v.* Williams, 29 Ohio St. 161, 163.

Pending a litigation between the board of education of a

Oath of members and officers.—All members of the board and all school officers must, before entering upon their official duties, take an oath or affirmation to support the constitution of the United States and of the State of Ohio, and that he will faithfully perform the duties of his office. The oath may be administered by the clerk or any member of the board. 3979.

Quorum, ayes and nays, etc.—A majority of the board constitutes a quorum for the transaction of business; but upon a motion or resolution to purchase or sell property, real or personal, to employ a superintendent, teacher, janitor, or employe, or to elect or appoint an officer, or to pay any claim or debt, or to adopt any text-book, the clerk must publicly call the roll of members, and enter on record the names of those voting aye and of those voting nay, and the president can only declare such a motion carried when a majority of all the members elected to the board have voted aye. Any member may demand the

township, and a special school district therein, as to the custody and control of a fund in the township treasury, the board permitted the treasurer, by a verbal agreement, to use the fund in his business, on his agreeing to pay interest thereon, the object being to earn sufficient by such use to meet the interest with which the board would be charged in the event the pending action should be decided against it. When the treasurer's term expired, and for the same reason, the loan was renewed, and a note with sureties taken for the amount then due, payable to the board with interest in ten months. *Held*, 1. Such loan was in contravention of public policy, and prohibited by statute. 2 In an action on the note by the board, the sureties thereon were not estopped from setting up the illegality of the transaction as a defense. 3. While the board may do any act in disaffirmance of such an illegal contract, and recover back the money illegally taken from the treasury by an action, or take a note and security for its return, yet it has no power, in the absence of statutory authority for that purpose, to ratify and adopt a contract made in violation of law. Board of Education v Thompson, 33 Ohio St. 321.

ayes and nays upon any question, and thereupon the clerk must call the roll and record the names, as above stated. 3982.

Vacancies, how filled.—Vacancy in the township board of education is required to be filled by the election of a clerk by the directors of the proper sub-district; and a clerk of a sub-district who is guilty of gross neglect of duty forfeits his office, and a new election must be held by the directors to fill the same. 3981.[1]

Members to receive no compensation.—It is unlawful for the members of any school board, except the clerk or treasurer, to receive compensation for their services; and any person violating either of these provisions, may be prosecuted therefor and punished, as for embezzlement. 3974, 6975.

Process, how served.—The process in all suits against any board of education must be by summons, and served by leaving a copy with the clerk or president of the board. 3976.

Prosecuting attorney to act as counsel.—It is the duty of the prosecuting attorney of the county to act as counsel of the board in suits brought by or against them in their official capacity, and to prosecute all actions which are brought under the revised statutes, against any member or officer of the board, in his individual capacity. No prosecuting attorney can be a member of the board of education.[2] In counties having a county solicitor it is made the duty of that officer to perform the above-mentioned duties of the prosecuting attorney, without additional compensation. 3977.

Board to make rules.—The board of education is required to make such rules and regulations as it may deem expedient and necessary for its government and the government of its appointees and pupils.[3] 3985.

[1] As amended, 88 Laws, 54. [2] 79 Ohio Laws, 26.

[3] Boards of education are authorized by law to adopt and enforce necessary rules and regulations for the government of the schools under their management and control. Sewell *v.* Board of Education, 29 Ohio St. 89.

Where instruction in rhetoric was given in any grade or department of such schools, and one of the rules adopted by the

Meetings.—No meeting of a board of education not provided for by its rules or by law will be legal, unless all the members have been notified as herein above set forth. 3985.

Bequests on condition may be accepted.—The board may, by resolution, accept any bequest made to them by will upon the conditions and stipulations contained in the will; and for the purpose of carrying out the conditions and limitations upon which the bequest is made, they are authorized to make all rules and regulations that may be required to fully carry into effect the provisions of the will in relation to the bequest.[1] 3975.

Vaccination may be enforced.—The board may make and enforce such rules and regulations to secure the vaccination of, and to prevent the spread of small-pox among the pupils attending or eligible to attend the schools of the district, as in its opinion the safety and interest of the public require; and the township trustees are required, on application of the board of education of the district, to provide, at the public expense, without delay, the means of vaccination to such pupils as are not provided therewith by their parents or guardians. 3986.

board for the government of the pupils therein provided that if any pupil should fail to be prepared with a rhetorical exercise, at the time appointed therefor, he or she should, unless excused on account of sickness or other reasonable cause, be immediately suspended from such department: *Held*, that such rule was reasonable. Ibid.

Where the teacher of such department, with the consent of the board, for a failure to comply with the rule or to offer any excuse therefor, suspended a pupil until he should comply with the rule, or offer a reasonable excuse for his non-compliance, neither the board of education nor the teacher is liable in damages therefor. Ibid.

[1] A devise to be applied to the youth of a township, named, which is afterward divided, will be applied for the education of youth residing in the territory that formed the township when the will was made. Board *v.* Ladd, 26 Ohio St. 210.

CHAPTER XXIV.

SCHOOLS.

Duty of board to provide free schools.—Each board of education must establish a sufficient number of schools to provide for the free education of the youth of school age, within the district, at such places as will be most convenient for the attendance of the largest number of youth, and may also establish one or more schools of higher grade than primary schools, whenever they deem it proper or necessary, and after the establishment of the latter they can not be discontinued under three years from the time of the establishment thereof, except by a vote of three-fourths of the members of the board of education.[1] 4007, 4009.

Township board to establish certain number of schools, etc.—Each township board of education must establish at least one primary school in each sub-district of the township; and must continue each day-school established by them not less than twenty-four, nor more than forty-four weeks in each school year. 4007.

School year, week, and month.—The school year begins on the 1st day of September of each year, and closes on the 31st day of August of the succeeding year. The school week consists of five days; a school month of four school weeks. 4016.

Children's homes and infirmaries.—The boards of education of the district in which a children's home or orphan asylum exists, or may be established by law, and of districts in which a county infirmary is located, when requested by the trustees of such home or asylum, or the directors of such infirmary, are authorized and required to

[1] 79 Ohio Laws, 37.

establish in such institution a separate school, so as to afford to the children therein, so far as practicable, the advantage of a common-school education. The schools so established are to remain under the care and control of the board of education, and be continued in operation in such infirmaries each year until the full share of all the school funds of the district belonging to such children, on the basis of enumeration, has been expended; and at such homes or asylums not less than forty-four weeks, and if the distributive share of school funds to which such school at any home or asylum is entitled by the enumeration of children in the institution, is not sufficient to continue the school the length of time required, the deficiency must be paid out of the funds of the institution. The board can incur no expenses for the support of such schools, other than the payment of teachers. All other necessary matters and things must be provided by the county commissioners. 4010.

German language; all branches must be taught in English.—When it is demanded, in writing, by seventy-five resident freeholders of any township, representing not less than forty pupils entitled to attend such school, who, in good faith, desire and intend to study the German and English languages together, the board of education must cause the German language to be taught in any school under its control; but nothing in the law is to be construed as preventing the board from causing the German or other language to be taught in any of the schools, and all branches must be

[1] The constitution does not enjoin or require religious instruction, or the reading of religious books, in the public schools of the state. Board of Education *v.* Minor, 23 Ohio St. 211.

The legislature having placed the management of the public schools under the exclusive control of directors, trustees, and boards of education, the courts have no rightful authority to interfere by directing what instruction shall be given, or what books shall be read, therein. Ibid.

[2] As amended, 82 Laws, 142.

taught in English. The demand for instruction in the German language must be made at a regular meeting, and prior to the beginning of the school year. 4020, 4021.

Powers of board.—Management and control of the public schools of the township, which are or may be established according to law, is vested in the board of education,[1] with full power, subject to the provisions of the law authorizing directors to employ, pay, and dismiss teachers in their respective sub-districts, to appoint a superintendent and assistant superintendent of schools, a superintendent of buildings, teachers, janitors, and other employes, and fix their salaries or pay, which must not be increased or diminished during the term for which the appointment is made, but no person can be appointed for a longer time than that for which a member of the board is elected, and no person can be appointed for a longer period than one year without a vote of three-fourths of all the members elected to the board. At the appointment the clerk must publicly call the roll of the members, and each is required to publicly announce the name of the candidate of his choice, and the clerk must record the names of those voting and the person for whom they voted. 4017.[2]

Employment of teachers.—The directors may employ the teacher or teachers of the school or schools in their sub-district. They may also dismiss any appointee for sufficient cause, and have power to fix the pay of teachers, which pay may be increased, but not diminished, by the township board, and must not, in any one year, exceed the aggregate amount of money to which the sub-district is entitled for the purpose of tuition for such year; but it is unlawful for the directors, prior to the April election and to the qualification of directors then elected, to employ any teacher for a term to commence after the expiration of the current school year. 4018.[3]

Teachers can not be employed without certificate.—It is required that no person shall be employed as a teacher unless such person has first obtained from the board of examiners, having competent jurisdiction, a certificate of a good moral character, and that he or she is qualified to teach orthography, reading, writing, arithmetic, geography, English grammar, and the history of the United States, and possesses an adequate knowledge of the theory and practice of teaching; and in case such person is required to teach other branches than those specified above, he or she must

[1] Under the act of March 14, 1853, as amended April 17, 1857—*Held*, that where a township board of education entered an order that teachers should not be employed by the local directors at a greater compensation than $20 per month, and the local dsrectors employed a teacher at a compensation of $30 per month, and certified the amount due to him at that rate, to the township clerk, it became the duty of that clerk to draw an order upon the township treasurer in conformity with such certificate. The State ex rel. *v.* Wilson, 11 Ohio St. 326.

[2] As amended, 87 Laws, 372. [3] As amended, 87 Ohio Laws, 46.

first obtain a certificate of the requisite qualifications, in addition to the branches aforesaid.[1] 4074.

But persons desiring or expected to teach only one or more special studies—such as music, drawing, painting, penmanship, gymnastics, German, or French—may be examined and tested only in regard to such study or studies, and having obtained a certificate of qualification and good moral character, may be employed as teachers of such special study or studies.[2] 4074.

When board must appoint teachers.—In case the local directors of any sub-district fail to employ a teacher or teachers, the township board must employ the same for the sub-district, and fix their salaries.[3] 4018.

Payment of teachers.—The directors must certify the amount due any teacher for services to the township clerk, whose duty it is to draw an order on the treasurer for the amount thereof, when the teacher files with him the said certificate, the term report prescribed by the state

[1] 79 Ohio Laws, 70.

[2] The provision of the school law, that no person shall be employed as a teacher unless he has first obtained the certificate required by law, does not render invalid a contract for employment made with the teacher before he obtains the requisite certificate, provided he obtains it before entering upon the duties of his employment. School District No. 2, etc. *v.* Dilman, 22 Ohio St. 194.

[3] The board of education of a township, acting upon the supposition that the local directors of a sub-district were neglecting to discharge their duties, assumed to exercise those duties, under the provisions of the school law, and employed a teacher for said sub-district, who, under that retainer, and without being notified by the local directors to desist, taught the school for three months, and at the expiration thereof received from the clerk of the board of education an order upon the township treasurer for his wages. *Held*, that the treasurer could not rightfully withhold payment of the order, upon the ground that the local directors had not been neglectful of their duties, and that the exercise thereof, by the board of education, was unwarranted by the facts of the case. Case *v.* Wresler, 4 Ohio St. 561.

commissioner of common schools, together with such other reports as may be required by the rules of the board, and a copy of his or her certificate of qualifications from the examiners, covering the entire time of service and a statement of the branches taught.[1] 4018, 4051.

No. 132. FORM OF TEACHER'S CERTIFICATE FOR PAY.

To the Clerk of Township, County, Ohio:

This is to certify that , under a contract duly made and entered into, taught a common school, in sub-district No. , of said township, from the day , 18 , to the day of , 18 , in all days, at per day; and there is due to h , for said services, the sum of dollars.

(Date.) ——— ———

——— ———

——— ———

(Amount.) *Directors.*

Auditor to certify amount of taxable property.—It is the duty of the auditor to certify to the clerk of each district, before the third Monday of April, the amount of taxable property in such district. 3958.[2]

Estimates of amounts required for school purposes.—Each board of education, at some lawful meeting between the third Monday in April and the first Monday in June, must annually require from their clerk a written statement of all unexpended balances in the treasury or to their credit, and determine by estimate, as

[1] A contract to pay a teacher can not be avoided on the ground of want or insufficiency of funds. School District No. 2, etc. *v.* Dilman, 22 Ohio St. 194.

Where the local directors of a sub-district employed a teacher, and fixed his salary at $125 per month in case he alone should be able to teach the school to their satisfaction, otherwise the teacher to employ and pay an assistant, and such teacher performed the service under his employment, without the aid of an assistant, to the satisfaction of the local directors, who certified to the township clerk the amount due to the teacher under the contract: *Held*, that the township clerk can not justify his refusal to draw an order on the township treasurer for the amount certified, on the ground that the contract under which the service was performed was against public policy and void. State ex rel. Werden *v.* Williams, 29 Ohio St. 161.

[2] As amended, 80 Laws, 17.

nearly as practicable, the entire amount of money, in addition to such balances, necessary as a contingent fund to be expended for prolonging the several schools of the district, after the state funds are exhausted, for the purchase of suitable sites for school-houses, for leasing, purchasing, erecting, and furnishing school-houses, and for all other school expenses, not exceeding the amount that would be raised by a levy of seven mills on each dollar of taxable property of the district, as valued for taxation. In districts in Hamilton county outside the city, and which maintain a high school, the levy may not exceed eight mills. 3958,[1] 3959.[2]

Certificate and collection of levy.—The board must certify the amount so estimated, in writing, to the county auditor, on or before the first Monday in June of each year, who is thereupon required to assess the entire amount of the estimate upon the taxable property of the district, and enter it upon the tax duplicate of the county, and the county treasurer must collect the same as other taxes are collected, and pay the amount collected over to the proper school treasurer, upon a warrant from the county auditor. 3960

County commissioners may levy when board fails to do so.—If the board fails to estimate and certify the levy as required, or to provide for the continuance of all schools in the township, for at least six months in the year, or to provide a suitable school-house in each sub-district, or to provide for each school an equitable share of school advantages, as provided by law, it is the duty of the commissioners of the county, upon being advised and satisfied thereof, to do and perform all the acts which the board is by law authorized to do and perform in that behalf. 3969.

Apportionment of fund.—So much of the fund raised by local levy as may be set apart for the continuation of the schools after the state funds have been exhausted, must be so apportioned that the schools in all sub-districts of the township may be continued the same length of time in each year. 3967.

Apportionment appealed to county commissioners.—In case this fund is apportioned by any township board in a manner not satisfactory to the directors of any sub-

[1] As amended, 80 Laws, 17.

[2] As amended, 87 Laws, 240.

district, such directors may give notice thereof to the county commissioners, who, at their first regular meeting after the receipt of such notice, must revise the apportionment, and their decision of the matter will be held final. Neither the township board nor the commissioners can reapportion any funds which were apportioned among the sub-districts before any preceding annual settlement; and in making an apportionment of funds, the amount set apart for any sub-district must not be increased or diminished by reason of any deficit or surplus in the funds previously apportioned to such sub-district. 3967.[1]

Apportionment of school funds by the county auditor.—It is the duty of the county auditor, immediately after his settlement with the county treasurer in each year, to apportion the school fund for his county. The state common school fund, and all other money in the county treasury for the support of common schools, and not otherwise appropriated by law, is required to be apportioned to the districts, sub-districts, joint sub-districts, and fractions of districts and joint sub-districts within the county, in proportion to the enumeration of youth; but if an enumerartion has not been taken and returned in any district, for any year, such district will not be entitled to any portion of the fund.[2] 3964.

Contingent fund and interest money.—At the time of the annual apportionment, it is the duty of the auditor to cause the contingent funds collected from the several districts to be paid to the districts to which they respectively belong. Money received from the state on account of interest on the common school fund is to be apportioned to the districts and parts of districts designated by the auditor of state as entitled thereto, in proportion to the enumeration of youth. 3964.

Distribution of money after apportionment.—It is the duty of the county auditor, immediately after the apportionment is made, to enter the same in a book to be kept for that purpose, and furnish a certified copy of the apportionment to each school treasurer and clerk in his county, and to give to each of such treasurers an order on the county treasury for the amount of money payable to him, and take his receipt therefor. 3965.

[1]As amended, 82 Laws, 92.

[2]As amended March 9, 1880, 77 Ohio L. 58.

Apportionment where county line divides original township.—Where an original surveyed township or fractional township is situate in two or more counties, and the land granted thereto by Congress has been sold, the auditor of the county to whose treasurer the interest on the proceeds of such sale is paid, is required to apportion such interest to the counties in which such township is situate, in proportion to the youth of the township enumerated in each, such auditor is required to certify to the auditor of each of the other counties the amount so ascertained to belong to the part of the township situate in his county, and transmit to the treasurer of each of such counties, an order on the treasurer of his own county for such amount, and the auditor of each county is required to apportion the amount of such interest belonging to the part of the township in his county to the districts or parts of districts entitled thereto, in proportion to the enumeration of youth therein. and certify and pay the same to the proper school officers. 3966.

Admission of pupils.—The board of education of any township may contract with the board of education of any adjacent city, village, or township district, for the admission of pupils into any school of such adjacent district, on such terms as may be agreed upon by such boards, and the expense so incurred is to be paid out of the school funds of the district sending such pupils. 4022.

Who are entitled to school privileges.—The schools are free to all youth between six and twenty-one years of age, who are children, wards, or apprentices of actual residents of the school district. Also, in the discretion of the township board, to children of proper age who may be inmates of a county or district children's home located in the school district, and all youth of proper age living apart from their parents or guardians, and supporting themselves, are entitled to the privi'eges of the schools in the district where they are employed. Each board of education may admit other persons upon such terms, or upon the payment of such tuition, as they may prescribe; but in all

counties not containing a city of the first grade of the first class, the pupil or parent of such non-resident pupil will be entitled to a credit on the amount of tuition so charged of the amount of school tax, if any, paid by him or her for the current year. The board of education may make such assignment of the youth of their respective districts to the schools under their control as will, in their opinion, best subserve the interests of education in the district. 4013.[1]

Section 4008 of the Revised Statutes authorizing the establishment of separate schools for colored children was repealed February 22, 1887. 84 Laws, 34. And there is no longer any statutory authority for the maintenance of such schools.

Evening schools.—In any district occupied in whole or in part of a city or village, the board may, at its discretion, provide a suitable number of evening schools for the in-

[1] As amended, April 13, 1880, 77 Ohio L. 196; and April 25, 1890, 87 Laws, 316.

[2] The statute of March 14, 1853, to provide for the reorganization, supervision, and maintenance of common schools, is a law of *classification*, and not of exclusion, providing for the education of all youths within the prescribed ages, and the words "white" and "colored," as used in said act, are used in their popular and ordinary signification. Van Camp *v.* Board of Education, 9 Ohio St. 406.

Children of three-eighths African and five-eighths white blood, but who are distinctly colored, and generally treated and regarded as colored children by the community where they reside, are not, *as of right*, entitled to admission into the common schools set apart under said act for the instruction of white youths. Ibid.

The act authorizing the classification of school children on the basis of color does not contravene the constitution of the state, nor the fourteenth amendment of the constitution of the United States, and colored children residing in districts where schools are duly provided for them, equal in every respect to those provided for white children, are not, as of right, entitled to admis-

struction of such youth as are prevented, by their daily vocation, from attending day schools, subject to such regulations as the board may, from time to time, adopt for the government thereof. 4012.

As to schools of higher grade.—Whenever the township board of education establishes a school of higher grade than the primary schools, such board has the management and control of such school, with full power to employ and dismiss teachers for the same, give certificates of such employment and for services rendered, directed to the township clerk, in the same manner and to have the same force and effect as similar certificates given by directors of sub-school districts. Such board may repair, add to, and furnish the necessary school-houses, purchase or lease sites therefor, or rent suitable rooms, and make all other necessary provisions relative to such schools as they may deem proper.[1]

Board of education to control admission of pupils.—The board of education has full power to regulate and control the admission of pupils to such schools of higher grade, according to age and attainment, and may admit persons over twenty-one years of age, and scholars from other townships on such terms, and under such rules as they may adopt, and shall maintain a school or schools of such higher grade not less than twenty-four nor more than forty-four weeks in any one school year.[1]

Estimate of funds for higher school.—In townships where such schools of higher grade are or may be established, the board of education must annually determine by estimate, as near as practicable, the entire amount of money necessary to

sion into the schools for white children. The State ex rel *v.* McCann, 21 Ohio St. 198.

[1] The father of a child entitled to the benefits of the public school of the sub-district of his residence, may maintain an action against the teacher of the school and the local directors of the sub-district, for damages for wrongfully expelling the child from the school. Roe *v.* Deming, 21 Ohio St. 666.

[1] Enacted May 1, 1891, 88 Laws, 484.

be expended in the township for school and school-house purposes, including the sustaining of teachers in such schools of higher grade, the prolonging of the terms of the several subdistrict or primary schools after the state funds have been exhausted, the erecting, repairing, and furnishing of all school-houses, and any other school purposes, not exceeding in any one year ten mills on the dollar of taxable property of the township, which amount must be certified in writing to the county auditor, who is thereupon required to enter and assess the same on the tax duplicate, as provided by law in other cases. (See *ante*, 314.)

Suspension and expulsion of pupils.—No pupil can be suspended from the schools except for such time as may be necessary to convene the board of education, or the directors, to pass upon the matter. No pupil can be expelled except by a two-thirds vote of the board or the directors, after the parent or guardian of the offending pupil has been notified of the proposed expulsion and permitted to be heard against the same; and no pupil can be suspended or expelled from the schools for a longer period than the current term.[1] 4014.

Teachers to keep records.—The board must require teachers and superintendents to keep the school records in such manner that they may be enabled to make the annual report to the county auditor. (See *ante*, "Clerk of Township.") And the board is authorized to withhold the pay of such teachers as fail to file with the clerk the reports required of them by the board. They may also require the superintendent to report each year such matters as the board may determine to be important or necessary for information in regard to the management and conduct of the schools, and to make such suggestions or recommendations as he may deem advisable, relating to the methods of instruction, school management, or other matters of educational interest. 4059.

Holidays.—Each teacher of common schools has the right to dismiss his or her school, without forfeiture of pay, on New Year's day, the Fourth of July, Christmas, and Thanksgiving day; also, for the week in which the county teacher s institute is held, for the purpose of attending the same, and all schools are required to be closed on decoration day, May 30, of each year.[1] No union or graded school can be lawfully dismissed for the purpose of attending the institute, without the consent of the majority of the teachers. 4015, 4091.

Teacher dismissed for insufficient reason may bring suit.—If the directors of any sub-district dismisses any teacher for any frivolous or insufficient reason, such teacher may bring suit against the sub-district, and if, on trial of the cause, a judgment is obtained against the sub-district, the directors thereof are required to certify to the clerk of the board the sum so found due, who is required to issue an order upon the township treasurer, to the person entitled thereto, to pay the same out of any money in his hands belonging to such sub-district, and applicable to the payment of teachers; and in such suits process may be served on the clerk of the sub-district, and service upon him will be sufficient. 4019.

Board to inquire and report concerning attendance.—Each board of education is required to ascertain on the second Monday of February and the second Monday of September, or within fifteen days thereafter, each year, in such manner as it may deem most expedient, the condition of all children under fourteen years of age within their jurisdiction employed at any daily labor, or who are not in attendance at any common or private school, and report all violations of the law as to attendance at school to its clerk, whose duty it is at once to proceed to prosecute each and every such offense. 4025.

Board may furnish school books.—If it be shown to the satisfaction of the board of education that the parent or guardian has not the means wherewith to purchase for his child or

[1] 79 Laws, 87.

children the necessary school-books to enable him to comply with the requirements of this chapter, the board must furnish the same, free of charge, to be paid out of the contingent fund at the disposal of the board. 4026.[1]

Statement of school-books and prices to be furnished by state school commissioner.—When proposals have been received from publishers, and accepted by the state school book board, to furnish school-books at the prices fixed by the board, it is the duty of the state commissioner to forthwith make out a complete list of the books named in the accepted proposals, fully describing each, and giving the price so fixed thereon, and the name and address of each publisher, and such other information as the commissioner may deem necessary or the state board may order, and at once transmit a copy of the same by mail to each board of education in the state. The commissioner is also required from time to time to make any such additional statements as may be necessary to keep the boards of education fully advised as to the action of the state school book board. It is the duty of the board of education to preserve and record all such statements.[2]

Adoption of text-books.—It is the duty of the board of education, on receiving the first of such statements, to meet, on the last Monday of August, or at an adjourned meeting within two weeks thereafter, and determine by a vote of a majority of all the members elected to the board, which of the text-books contained in the statement shall be used in the schools under its control; and no text-book so adopted can be changed or any part thereof altered or revised for five years after its acceptance by the state board, without a vote of three-fourths of all its members at a regular meeting.[2]

Supplying books to pupils.—The statutes provide two modes of supplying such text-books to scholars. 1. *The board may purchase the books through its clerk from the designated publishers,* as follows: At regular meetings in April and August it is the duty of the board to determine which, and the number of

[1] As amended, 87 Laws, 316.

[2] Enacted May 4, 1891, 88 Laws, 568.

each of the books the schools under its charge will require until the next meeting in April and August, and draw an order in favor of the clerk for the amount necessary to pay for the books. It thereupon becomes the duty of the clerk to forthwith order the books from the publisher, and of the publisher to ship them to the clerk without delay. The clerk must examine the shipment as soon as received, and if found right and in accordance with the order, must remit the amount of the order to the publisher. The board of education is required to pay all the transportation charges for the books out of the contingent fund. If the board can at any time secure such books of the publisher at a lower price than that fixed by the state board it is its duty to do so, and may without unnecessary delay make effort to do so before adopting any particular text-book. If the board of education orders books through its clerk, it is its duty to make all necessary arrangements to place the books within easy reach of and accessible to all the scholars in the district. For that purpose the board may make such contracts, and take such security as may be deemed necessary for the custody, care, and sale of the books and accounting for the proceeds, allowing not more than ten per cent of the cost of the books for that service. The books must be sold to the pupils of school age in the district at a price not to exceed that paid the publisher with ten per cent added, and the proceeds of the sales must be paid into the contingent fund of the district. Whoever receives books from the board for sale, and fails to account honestly and fully for the same, or for the proceeds, when required, is to be held guilty of embezzlement and punished accordingly.[1]

2. *The board may contract with local dealers to furnish the books*, at the prices fixed by the state board with not more than ten per cent added, such dealers being responsible to the publishers for all books furnished them.[1]

When board must purchase back pupil's book.—When pupils remove from any district, and have text-books of the kind adopted in such district, and not of the kind adopted in the district into which they remove, the board of the district from

[1] Enacted May 4, 1891, 88 Laws, 568.

which they remove must purchase the same at the fair value thereof and resell the same as other books. Nothing in the act is to prevent the board from furnishing free books to indigent pupils, as above set forth.[1]

Distribution of books, if published by state board.—The state school book board has power in a certain contingency to publish school books, and if it should elect to exercise such power the books are to be distributed as follows: In the first week in July the clerk of the district must prepare and file with the county auditor, who is custodian of such books for the county, a complete list of all the books required in the schools of the district for the next year, based upon the school enrollment and attendance. The auditor is required to enter the list in his books, and on or before July 20th of each year to forward a copy of the same with the enrollment and attendance to the state school book board, which is required to order the books shipped to the auditor, and that officer must distribute them to the various school boards according to the lists.[1]

State board to provide regulations for supplying schools with books.—The state school book board is required to make such necessary regulations for the distribution, care and control of books of the state, as shall properly supply such books at cost to all the schools of the state.[1]

Distribution of state books to pupils.—It seems to be the intention of the act that if the board of education receive state books from the county auditor, they shall be supplied to pupils in the same manner and under the same rules as to prices as if they were purchased by the board, but the act is not as clear on this point as it might be made.[2]

Penalty for not sending children to school.—A parent, guardian, or other person, who fails to comply with the provisions of the law as to the attendance of children at school shall be liable to a fine of not less than two nor more than five dol-

[1] Enacted May 4, 1891, 88 Laws, 568.

[2] Compare sections 4, 7, and 8, of the act of May 4, 1891, 88 Laws, 568.

lars for the first offense, nor less than five nor more than ten dollars for each subsequent offense; such fine to be collected by the clerk of the board of education, in the name of the state, in an action before any court having competent jurisdiction; and the money so collect by each clerk to be paid to the county treasurer, and applied to the use of the common schools of his district. 4027.

Time of attendance how computed in certain cases.—Two weeks' attendance at half time, or night school, is to be considered within the meaning of this chapter, equivalent to an attendance of one week at a day school. 4029.

All children must be taught.—All parents, guardians and other persons having charge of children must instruct them or cause them to be instructed in reading, spelling, writing, English grammar, geography and arithmetic; and every such parent, guardian or other person having charge of any child between eight and fourteen years of age is required to send such child to a public or private school. In township districts such child must be sent to school not less than sixteen weeks in each school year, at least eight weeks of which must be consecutive. Any such child may be excused from attendance, however, by the township board of education when it is satisfied that the child's physical or mental condition has been such as to prevent its attendance or that the child is taught at home by some qualified person in such branches as are usually taught in primary schools.[1]

Youth not regularly employed, between eight and sixteen years of age, must attend school for the full term the schools of the district in which they reside are continued in the school year, unless excused for the reasons above named. If the parents or guardians having charge of such youth fail to send them to school for the full term, or such youth absent themselves without satisfactory excuse, the parents, guardians or youth are subject to the provisions and penalties set forth below, as applicable to such cases.[1]

[1] Enacted April 25, 1890, 87 Laws, 316.

No child under the age of fourteen can be employed unless the parent, guardian or person in charge of such child is able to prove that the same has complied with the above provisions as to attending school, or that the child has completed the usual course of primary and grammar grades in some public or private school. Before employing any minor, the person or corporation so employing him or her must demand such proof, and make a record of the same, and on request allow the truant officer to inspect the record, and also a record showing the name, date and place of birth of each minor employed, with the name and residence of his or her parent or guardian. This record is also to be open to the inspection of the chief inspector of work-shops and factories and his assistants. For a violation of these provisions any employer, person, company, or corporation, is liable to a fine of fifty dollars to be recovered by action for debt before any justice of the peace of the township of the township, to be brought in the name of the clerk of the board of education. 4029–2 and 6986*aa*.

Minors between fourteen and sixteen, who can not read and write the English language are required to attend school at least one-half of each day, or an evening school, or to take regular instruction from some person qualified in the opinion of the clerk of the township board of education to teach such branches, until he or she shall have obtained a certificate from said clerk certifying that the minor can read at sight, and write simple sentences in the English language. Every person, company or corporation employing such minor must exact such school attendance from him or her and be prepared on demand of the truant officer to furnish evidence that the minor does comply with the law in this respect, and on failure so to do is liable to the fine of fifty dollars above mentioned. 4029–3.[1]

Children under the age of sixteen, who have been discharged from employment to enable them to receive instruction, must

[1] As amended, April 2, 1890, 87 Laws, 142.

be taught in some public or private school or at home until they have acquired the instruction mentioned in the paragraph last above; and it is the duty of the parent, guardian or person in charge of such child to cause such instruction to be given, and on failure so to do such party is liable to a fine of not less than five nor more than twenty dollars for the first offense and not less than twenty for each subsequent offense, or to imprisonment for not less than one nor more than three months, unless the child has been excused from such attendance by the clerk of the township board of education. The fines when collected are to be added to the public school funds of the district in which the offense occurred. 4029–4.[1]

Truant officer.—The township board of education is required to appoint some constable or other person as truant officer, at a compensation to be fixed by the board. Such officer is to enforce the school laws relating to attendance, is vested with police powers and authorized to enter factories, work-shops, stores and other places where children may be employed, and to perform such other duties as the superintendent or board may deem necessary to the preservation of the morals and good conduct of school children. 4029–6.[1]

It is the duty of the truant officer to make reports to the clerk of the board of education as often as the clerk may require it, and to keep a record of his transactions open to the inspection of members and officers of the board. It is the duty of said clerk to provide suitable blanks for the truant officer. 4029–7.[1]

Truants and incorrigibles.—All children between the ages of seven and fourteen, who are habitual truants, or while at any public or private school are incorrigible, vicious, or immoral, and all such children, as well as all minors between the ages of fourteen and sixteen who can not read and write the English language, who absent themselves habitually from school, or who while in attendance at any public or private school, are incorrigible, vicious or immoral in conduct, or

[1] As amended, April 10, 1890, 87 Laws, 142.

habitually wander about the streets and public places during school hours, having no business or lawful occupation, are to be deemed juvenile disorderly persons, and subject to the provisions of the law applicable to the same. 4029–5.[1]

Duty of truant officer to examine cases, and warn parents.—It is the duty of the truant officer to examine all cases of truancy coming to his notice, or when directed so to do by the superintendent or board, and to warn the truants, their parents or guardians, in writing, of the final consequences of truancy if persisted in, and to notify parents, guardians or persons in control of any child between eight and fourteen years, that said child is not attending school, and to require such child to be sent to some recognized school within five days; and it is the duty of the parent, guardian or person in charge to send such child to school in accordance with the notice. 4029–8.[1]

Penalty for failure to comply with notice.—If the parent, guardian or person in charge of the child fail or refuse to send the same to school, it is the duty of the truant officer to make or cause to be made a complaint against such parent, guardian or person in charge, in any court of competent jurisdiction in the district where the offense occurred, and upon conviction such party is to be fined not less than five nor more than twenty dollars, or the court may in its discretion require the person convicted to give bond in the penal sum of one hundred dollars, with one or more sureties, approved by the court, conditioned that the person convicted shall cause the child or children to attend some recognized school within five days thereafter, and to remain at said school during the term prescribed by law. 4029–8.[2]

When parent is unable or fails to control child.—If the parent, guardian or other person in control of the child prove inability to cause the child to attend school, then such party is to be discharged, and the court upon complaint of the truant

[1] As amended, March 17, 1891, 88 Laws, 136.

[2] As amended, April 2, 1890, 87 Laws, 142.

officer or other person, shall proceed to determine whether the child is a juvenile disorderly person, within the meaning of the law, and if so the child is to be held guilty of a misdemeanor, and sentenced to some juvenile reformatory, but no child over ten years old can be sentenced to any county children's home. The court may suspend the sentence for such time as the child may regularly attend school and properly deport himself or herself, and the same proceedings against the juvenile disorderly person are to be had if the parent, guardian or person in charge thereof fails to cause same to attend school. 4029–8.[1]

The child may be sent to the industrial school for boys at Lancaster, or for girls at Delaware, by the trustees of a children's home whenever it is declared by resolution of said trustees, at a regular meeting, that the character of any child at such home is vicious, and so bad as to be detrimental and harmful to the habits and good morals of other children at the home. No child under nine years of age can be sent to a juvenile reformatory. 4029–8.[1]

Truant laws not operative, where.—The truant laws are not operative in any school district where there is not sufficient accommodation to seat children compelled to attend school, and no prosecution can be instituted against any parent, guardian or person in charge of a child, or any child, unless they have received due notification from an officer empowered under the act, that they are acting in violation of the same. 4029–9.

Children supporting themselves or others.—When any truant officer discovers a child under fourteen, wholly or partially dependent on his or her own labor for support, or who is the support of others unable to provide their own sustenance, or when in the judgment of the superintendent or the board of education, it is necessary for such child to contribute to the support of the family of which he is a member, it is the duty of the truant officer to report such case to the authori-

[1] As amended, April 2, 1890, 87 Laws, 142.

ties whose duty it is to care for the poor, and to endeavor to obtain such relief as may release the child for such length of time each year as it is required to attend school. Such child can not be declared a pauper or removed to an infirmary, reformatory or children's home, unless he or she willfully neglects to take advantage of the provisions made by the truant officer for his or her relief and instruction. Failing to obtain such relief the truant officer, superintendent or board of education may make suitable arrangements for the private instruction of the child while so adversely conditioned. 4029–10.

Reports of pupils by teachers.—It is the duty of all principals and teachers of schools, public and private, to report to the clerk of the board of education of the district, the names, ages, and residence of all pupils in attendance at their schools, together with such other facts as the clerk may require to facilitate the carrying out of the provisions of the law, and the clerk must furnish blanks for that purpose. The reports are required to be made in the last week of September, December, February and April of each year. 4029–11.[1]

Penalties.—Officers or agents of corporations who participate in or are cognizant of any violation of the laws as to school attendance, are subject to the same penalties as individuals for so offending. Any officer upon whom the same laws impose the performance of duties toward their enforcement, neglecting such duties, is liable to a fine of not less than twenty-five nor more than fifty dollars for each offense. 4029–12–13.

CHAPTER XXV.

SCHOOL PROPERTY.

School-houses, how provided, repaired, furnished, etc.—The board of education of any district is empowered to build, enlarge, repair and furnish the necessary school-houses, purchase or lease sites therefor, or rights of way thereto, or rent suitable school-rooms, and make all other necessary provisions for the schools under its control. It is the duty of the directors, under such rules and regulations as the board of education may prescribe, to provide fuel for schools, build, enlarge, repair, and furnish school-houses, purchase and lease sites therefor, rent school-houses, build and keep in good repair all fences inclosing school-houses, plant shade and ornamental trees on school grounds, and make all other provisions necessary for the convenience and prosperity of the schools within the sub-district; and the board of education is held responsible for all contracts made by the directors when such contracts are made in accordance with the rules and regulations, or any resolution of the board.[1] 3987.[2]

[1] Under the school act of March 14, 1853, the township board of education has power to designate the particular place where the school-houses in sub-districts shall be built; and the powers which, in this respect, the statute confers on the local directors of a sub-district are to be exercised in subordination to the paramount authority of the township board of education. Hughes *v* Board of Education, 13 Ohio St. 336.

Where a township board of education had resolved to sell the old site of a sub-district school-house, and had purchased a new site, and notifying the local dsrectors of the sub-district of their action in the premises, instructed them to sell the former, and to build a new school-house on the latter, and the local directors, disregarding such instructions, proceed to build a new school-house on the old site, and keep up a school therein: *Held*, that the local directors were guilty of such insubordination and

[2] As amended, 82 Laws, 86; and 83 Laws, 84.

No. 133. FORM OF DIRECTORS' CERTIFICATE FOR INCIDENTAL EXPENSES.

To the Clerk of , Township, County, Ohio:

This is to certify, that , under a contract duly made and entered into, furnished the school-house, in sub-district No. , of said township; and there is due to him the sum of dollars.

(Date.) —— ——

—— ——

(Amount.) *Directors.*

Appropriation of lands for school purposes.—In every case where it may be necessary to procure or enlarge any school-house site, and the board of education of any township are unable, from any cause, to agree with the owner of the land sought to be obtained, as to the purchase thereof, the board must cause an accurate survey, plat, and description of the premises to be made, and file the same with the probate judge of the county; and thereupon the same proceedings of appropriation are to be had as are provided for the appropriation of private property by municipal corporations. 3990.

Resolution to appropriate.—The method of procedure

neglect as to justify the township board of education in exercising the powers and duties which would otherwise devolve on the local directors, and in building a school-house on the new site and employing a teacher therein, and such teacher is entitled to be paid his wages out of the township treasury, on the order of the township board. The State ex rel., etc. *v.* Lynch, 8 Ohio St. 347.

A board of education is not liable in its corporate capacity for damages for an injury resulting to a pupil while attending a common school, from its negligence in the discharge of its official duty in the erection and maintenance of a common school building under its charge, in the absence of a statute creating a liability. Finch *v.* Board of Education, 30 Ohio St. 37.

required in cities and villages, under the act named, is first to pass, by a vote of two-thirds of all the members of the council, a resolution to appropriate the desired property. 2234.

No. 134. Form of Resolution to Appropriate Property.

Resolved, two-thirds of all the members elected to this board concurring therein, and declaring the same to be necessary, that the board of education of township being unable to agree with the owner of the premises hereinafter described as to the purchase thereof, hereby declares its intention to condemn and appropriate to the public use, for a sight for a school-house in the sub-district of said township (*or say*, to enlarge the grounds of the school), and hereby condemns and appropriates to such public use, for school purposes, the following described property, to wit (*here describe the property by metes and bounds, as surveyed*). And the president and clerk of this board are hereby authorized and instructed to institute the necessary proceedings, and to apply to the court for an inquiry and assessment of the compensation to be paid for such property.

Application to the probate court.—The next step after the passage of the resolution to condemn, is to make application to the court to assess the compensation due the owner for the land appropriated. For such purpose the board may demand the assistance of the prosecuting attorney of the county. 2236.

No. 135. Form of Application.

The board of Education of Township *vs.*	County Probate Court. No. . Application to assess compensation.

Plaintiffs represent that, by a resolution passed by the board of education of township, on the day of

, A. D. 18 , the yeas and nays being taken, and two-thirds of the members elected to such board concurring therein, did declare that it was necessary to condemn and appropriate to the public use, for school purposes, and declaring its intention so to do, did condemn and appropriate to the public use, for the purpose of a sight for a school-house in the sub-district of said township, the following described property, to wit (*here insert the description of the property as contained in the resolution*).

Plaintiffs further represent, that the several parties made defendants in this action own, and claim to own, or have some interest in or title to, the property proposed to be taken for the public use, for school purposes, and that plaintiffs are unable to agree with said owners upon the purchase of said premises.

Wherefore, plaintiffs ask the court to cause a jury to be impaneled for an inquiry and assessment of compensation, to be paid by the said board of education for said property, condemned as above set forth, and designated as shown on a plat filed herewith, and made part hereof.

And plaintiffs ask that, upon payment into court, or to the proper owners, defendants herein, of an amount of compensation, equal to the sum so assessed as the value of the parcels of ground above described, the appropriation of such land may be allowed and possession awarded it, according to law; and that the court will divide the sum so paid, or order its distribution, among the several claimants, in respect to their interests in the property.

(*Signed by the president of the board or the prosecuting attorney.*)

Further proceedings in appropriation.—The defendants should be duly served with notice of the application, in the same manner that service of summons is usually made, and five days must elapse after the date of service, as shown by the return of the sheriff, before a jury can be

impaneled. On the day named in the application, if all the defendants have been duly served at least five days previously, the parties applying should appear in the probate court and ask to have a jury impaneled, which, being done, the jury should be sent to view the premises, and then the hearing of testimony as to the value of the property may proceed. In such cases, two questions only are to be determined by the jury: 1. The value of the land appropriated, without reference to any benefits that may arise from the proposed improvement by the township; and 2. How much, if any, less valuable the remainder of the property will be rendered by reason of the appropriation. These two sums added together will give the amount to which the owner is entitled. After the verdict is returned, the court should make an entry, finding the amounts due the different defendants, directing the time and manner of payment, and of putting the township into possession of the property. The board may, at any time within six months after the date of the verdict, secure the property by the payment of the amount of the verdict into court, or to the defendants; but if the money is not paid within that period, the verdict ceases to be of any effect, and the owner can not be compelled to accept the amount thereof for his land. For further information as to the proceedings in such cases see the Revised Statutes, sections 2232 to 2260, inclusive.

Vote taken as to issuing bonds to buy land or build.—Whenever the board of education of any township may determine that it is necessary to purchase ground or build a school-house, or to do either, and that such purchase or building will require a greater tax than they are authorized to levy, and that to provide means it will be necessary to issue bonds, such board must make an estimate of the probable cost of such site, and such school-house, or either; and at a general or special election, giving ten days' notice, by posting in five of the most public places of the township, stating the time, place, and object of the election, must submit to the voters of the township the folowing

questions: 1. Whether taxes may be levied for such purposes, or either of them; 2. Whether the levy for such purposes shall be made from year to year thereafter; 3. What amount shall be levied in each year until the whole is raised. 3991.

No. 136. Form of Notice of Election.

To the Qualified Electors of Township:

Notice is hereby given that an election will be held at , on the day of , 18 , between the hours of A. M. and P. M., for the purpose of determining whether or not ground shall be purchased and a new school-house erected. The cost of such improvement, as estimated by the board, will be as follows: For the purchase of ground, dollars; for the erection of building, dollars. The following questions will be submitted to the qualified voters at said election:

1. Whether taxes shall be levied for the purpose of purchasing ground and building a school-house, or either of them.

2. Whether the levy for such purposes shall be made from year to year.

3. What amount shall be levied in each year.

By order of the board of education of township.

(Date.)

Clerk of Township.

Levy and collection of taxes voted.—If a majority of the qualified voters at such election vote in favor of levying taxes for the purposes named, or either of them, of continuing the levy from year to year, and for the amount to be levied each year, the board of education must certify the amount of the levy annually to the county auditor, who is required to place it upon the tax duplicate. In case any part of the district is situated in an adjoining county, the levy is to be certified and collected as in case of levies by a joint sub-district so situated. 3992.

Issue of bonds.—To enable the board to anticipate the moneys to be raised by taxation, for building or purchasing ground, they are authorized to borrow the sum of money necessary, not exceeding the amount so authorized to be levied, and to issue bonds therefor, payable as indicated by the vote, after a certain day to be named therein, with interest, payable semi-annually, at a rate specified, not exceeding six per cent. per annum. The bonds may be in such sums as the board determine, must be numbered consecutively, made payable to bearer, bear date the day of sale thereof, and be signed by the board officially. The clerk must keep a record of the number, date, amount, and rate of interest of each bond sold, the sum for which each bond was sold, the name of the person to whom sold, and the time when payable, which record is at all reasonable times to be open to the inspection of the public. The bonds can in no case be sold for less than par, nor bear interest until the purchase-money for them has been paid. (For form of Bond Register, see *ante*, chapter on "Bonds.") 3993.

Proceedings, when cost is over five hundred dollars.—Whenever any board of education builds, enlarges, repairs, or furnishes a school-house, or makes any improvement, the cost of which will exceed five hundred dollars, except in cases of urgent necessity, or for the security and protection of school property, the board is to proceed as follows:

1. *Advertisement for bids.*—An advertisement for bids must be published for the period of four weeks in some newspaper of general circulation in the township, and in two, if there be so many; and if no newspaper is published therein, then by posting up such advertisement in three public places in the township. The advertisement must also be entered in full by the clerk on the records of the board. 3988.

No. 137. FORM OF ADVERTISEMENT FOR BIDS.

Sealed proposals will be received at the office of the clerk

of the board of education of , street, in , until twelve o'clock at noon, on the day of , 18 , for building a school-house on the lot situated . according to the plans and specifications on file in said office.

Each bid must contain the name of every person interested in the same, and be accompanied by a sufficient guaranty of some disinterested person, that, if the bid is accepted, a contract will be entered into, and the performance of it properly secured.

The bid for each kind of material called for by the specifications must be stated separately, and the price of each given, and the price of labor must also be separately stated.

None but the lowest responsible bid will be accepted, and the board may reject all bids.

By order of the board of education.

(Date.) (Signed,) —— ——

Clerk.

2. *Bids filed.*—The bids, duly sealed, must be filed with the clerk by twelve o'clock at noon of the last day, as stated in the advertisement.

3. *When opened.*—The bids are to be opened at the next meeting of the board, and publicly read by the clerk and entered in full on the records of the board.

4. *Guaranties.*—Each bid must contain the name of every person interested in the same, and be accompanied by a sufficient guaranty of some disinterested person, that, if the bid is accepted, a contract will be entered into, and the performance of it properly secured.

5. *Prices.*—If the work bid for embraces both labor and materials, each must be separately stated, with the price thereof.

6. *What bids accepted.*—None but the lowest responsible bid can be lawfully accepted; but the board may, in their discretion, reject all bids, or they may, in their discretion,

accept any bid for both labor and material, which is the lowest aggregate cost of such improvement or repairs.

7. *Part accepted.*—Any part of a bid lower than the same part of another may be accepted, whether the residue is higher or not, and, if higher, such residue must be rejected.

8. *The contract.*—The contract is to be between the board of education and the bidders, and the board must pay the contract price for the work, when it is completed, in cash, and may pay monthly estimates, as the work progresses, if they think best.

9. *Equal bids.*—If two or more bids are equal, in whole or in part, and are lower than any others, either may be accepted; but in no case can the work be divided between them.

10. *Collusion.*—When there is reason to believe that there is any collusion or combination among the bidders, or any number of them, the bids of those concerned therein must be rejected. 3988.

No. 138. FORM OF CONTRACT FOR BUILDING SCHOOL-HOUSE.

This memorandum of an agreement by and between the board of education of , party of the first part, and , party of the second part, witnesseth, that the said party of the second part, for the consideration hereinafter named, does hereby agree and contract to furnish the labor and materials necessary for that purpose, and to build and construct a school-house on the lot situated , according to the plans and specifications hereunto attached and made a part of this contract. All said materials to be of the best of their kind, and all the work and labor to be done in a thorough, substantial, and workmanlike manner, under the direction and to the satisfaction of (*here say*, "the superintendent of buildings," *or*, "the superintendent appointed by the board," *or*, "the architect in charge"), the whole to be completed,

ready for use and occupation, on or before the day of , 18 .

And for and in consideration of the furnishing of the said materials, and the completion of the said work, according to the tenor hereof, the party of the first part hereby agrees to pay to the party of the second part the following compensation, to wit:

For

For

(*Stating each kind of labor and material, and the prices, as named in the bid.*)

Such compensation is to be paid in monthly installments, upon estimates by the architect of the amount of work completed, always reserving from the estimates per cent., until the whole work is completed and accepted, when the balance shall be paid.

It is further agreed by and between the parties, that in case any alteration or addition be made in or to the work called for by the plans and specifications, by order of the said board of education, the same shall be paid for as follows: If it be of the same nature or kind as any of that called for by the plans and specifications, it shall be paid for at the prices named herein; if it be of any other kind, it shall be paid for as may be agreed upon by and between the parties; but no alteration or addition to said work shall be construed into a rescission or abandonment of this contract.

In testimony whereof, the president and clerk of said board of education, duly authorized on behalf of said board, and the said , have hereunto set their hands and seals this day of , 18 .

—— ——— [SEAL.]
President.

—— ——— [SEAL.]
Clerk.

—— ——— [SEAL.]

The plans and specifications prepared by the architect should be attached to the contract before the same is signed.

No. 139. Form of Bond to secure Completion of Contract.

Know all men by these presents, that , and , are held and firmly bound unto the board of education of , in the sum of dollars, to be paid to the said board of education and its successors; for which payment, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators firmly by these presents.

Witness our hands, the day of , 18 .

The condition of the above obligation is such, that, whereas, the said , on the day of 18 , entered into a contract with said board of education to furnish the labor and materials necessary for that purpose, and to erect a school-house on the lot.

Now, if the said shall well and truly perform his said contract according to the tenor thereof, then the above obligation shall be void; otherwise to remain in full force and effect.

____ _____
____ _____
____ _____

Signed in presence of us:

____ _____
____ _____

School property exempt from taxation or execution.—All property, real or personal, vested in any board of education, is exempt from taxation, and from sale on any execution, or other writ or order in the nature of an execution. 3973.

Erection of school-house in joint sub-district.—When it becomes necessary to rebuild the school-house of a joint sub-

district, or to change the site and erect a new building thereon, the question of rebuilding or changing the site and building thereon is to be determined by a vote of a majority of the directors of the joint sub-district in such manner as to secure the better accommodation of a majority of scholars in the same. Any funds assessed and collected for the building of such school-house must be transferred to the custody of the board of education of the township where the building is to be erected, which board is required to proceed as in other cases of building school-houses. If the location be changed to another township, the personal property of the sub-district is to be transferred to the board of education of such township, and any real property in the township from which the location is changed, is to be sold by the board of education thereof, and the proceeds transferred to the board of education of the township to which the location is changed. 3989.

As to new school-house in joint sub-district.—When there is no school-house in any joint sub-district heretofore established by proceedings in the probate court, and no site designated for one, the local directors or a majority of them are required to designate a site, and report the same to the clerks of the boards of education having territory in the joint sub-district. The board of education of the township in which the site is located must at the next annual estimate and levy, make an estimate and levy sufficient to purchase the site and build and furnish a suitable school-house. In case such board fails to report the estimate to the county auditor before the first Monday of January next thereafter, the county commissioners, at the request of a majority of the local directors, are required to make the estimate and levy, which is to be made and collected as other funds are levied and collected for other joint sub-districts. 3941*a*, 80 Laws, 62.

School libraries.—In any township district the board of education may expend not exceeding seventy-five dollars in any one year, for the purchase of books other than school books, and for philosophical or other school apparatus, but not more than one-half the amount can be lawfully expended in the purchase of apparatus. The books so purchased are to constitute a school library, the control and management of which is vested in the board of education. 3995.[1]

[1] 78 Ohio Laws. See also, Libraries, ante p. 146.

The boards of education and directors of sub-districts are required annually in the months of March, April, May, or November to cause to be planted such number of shade and ornamental trees as will in their judgment furnish shade for the pupils and beautify the school grounds. 81 Laws, 105.

Use of school-house for literary entertainments, etc.—When the board of education deem it for the advantage of the children in any district to hold literary societies, school exhibitions, singing schools, or religious exercises, they may upon the application of a majority of the sub-district directors, or a majority of the parents actually sending children to such school, authorize and require the opening of such school-house by the sub-district directors for that purpose.[1]

[1] 87 Laws, 240.

CHAPTER XXVI.

ENUMERATION OF YOUTH

Local director to make enumeration.—It is the duty of the local director who has been elected clerk in each sub-district, to take, or cause to be taken, annually, during the two weeks ending on the fourth Saturday in July, an enumeration of the youth resident within the sub-district, and to return a certified copy thereof to the clerk of the township. In townships in which there is but one sub-district, the president of the board is required to take, or cause to be taken, the enumeration, and return it to the township clerk. 4033.[1]

When township clerk must cause enumeration to be taken.—In case any local director fails to take and return the enumeration, it is the duty of the township clerk to employ a competent person to take the same, and allow him a reasonable compensation for his services, and to proceed to recover the amount so paid, in a civil action before any court having jurisdiction, in the name of the State of Ohio, against the delinquent director. 4033.[1]

Who shall be enumerated.—The enumeration is to be of all unmarried youth permanently resident within the district, between six and twenty-one years of age, specifying those between six and eight years of age, the number between eight and fourteen, the number between fourteen and sixteen, and the number between sixteen and twenty-one, separately noting the sex of each, the number, if any, residing in the Western Reserve, the Virginia Military District, the United States Military District, in any original surveyed township, or fractional township, to which belongs section sixteen, or other land in lieu thereof, or any other lands for the use

[1] As amended, 85 Laws, 192.

of schools, or any interest in the proceeds of such lands. 4030.[1]

Persons taking enumeration to be sworn.—Each person taking the enumeration is first to be sworn or affirmed to take the same accurately and truly, to the best of his skill and ability. When making return of the enumeration, he must accompany the return with his affidavit that he has taken and returned said enumeration accurately and truly, to the best of his knowledge and belief, and that said list contains the names of all the youth so enumerated and none others. 4031.[2]

Compensation of enumerators.—Each person taking and returning the enumeration is entitled to receive a reasonable compensation for his services, which compensation in sub-districts may not exceed two dollars for each person authorized or required to take the enumeration. 4031.[1]

No. 140. FORM OF ENUMERATION RETURN.

Annual Enumeration Return

Of the unmarried youth between the ages of six and twenty-one years, in sub-school district , of township, county, taken and returned by (*here say*, local director and clerk of said sub-district, *or otherwise designate the person's official capacity*), between the first Monday in September and the first Monday in October, 18 .

(*Oath, to be taken before enumeration is commenced.*)

State of Ohio, *County, ss:*

I, , do solemnly swear (*or*, affirm) that I will take the enumeration of youth in the sub-school district , of township, county, Ohio, accurately and truly, to the best of my skill and ability.

Sworn to before me, and subscribed in my presence, this day of , A. D. 18 .

[1]As amended, 85 Laws, 192; and 87 Laws, 80.

[2]As amended, 80 Laws, 192.

Name.	Age.	Sex.		Race.				
		Male.	Female.					

Recapitulation.

	Male.	Female.
No. of youth between 6 and 8.....		
No. of youth between 8 and 14.....		
No. of youth between 14 and 16.....		
No. of youth between 16 and 21.....		
Total No. of unmarried youth between 6 and 21..		

State of Ohio, *County, ss:*

, being duly sworn (*or*, affirmed), says that the foregoing enumeration of youth was accurately and truly taken and returned by him, to the best of his knowledge and belief, and that the above list contains the names of all the youth so enumerated and none others.

Sworn to before me, and subscribed in my presence, this day of , 18 .

In case the whole or any part of the district is situated in the Western Reserve, the Virginia Military District, or the United States Military District, or is entitled to the rent or interest of section sixteen, or any other school land, or proceeds of any such land, the youth residing in such portion should be reported in one of the columns at the right hand, with a proper designation at the top of such

column, and the whole number of such should be set down in the recapitulation.

When enumeration may be retaken by state commissioner.—Whenever the school commissioner, on examination of the enumeration of any district, thinks the same excessive or incorrect, he may require it to be retaken and returned; and, if he deem it necessary, may appoint some person to perform the duty, and such person must take the same oath, perform the same duties, and will be entitled to the same compensation as the person who took the enumeration in the first instance; and the school funds must be distributed on the corrected enumeration. 4040.

Penalty for altering enumeration.—Any officer, through whose hands the enumeration may pass, who, by percentage or otherwise, adds to or takes from the number actually enumerated, is to be deemed guilty of a misdemeanor, and, upon conviction of such offense, fined in any sum not less than five nor more than one hundred dollars, or imprisoned in the county jail not less than ten nor more than thirty days, at the discretion of the court. 4041.

Clerk to transmit abstract to auditor.—It is the duty of the township clerk, on or before the first Saturday of August in each year, to make and transmit to the county auditor an abstract of the enumeration, according to the form prescribed by the state commissioner of schools, with an oath or affirmation, indorsed thereon, that it is a correct abstract of the returns made under oath or affirmation to him. This oath or affirmation may be administered by any member of the board of education, or by the county auditor. 4035.[1]

When auditor must take enumeration.—If the clerk fail to return the enumeration, or an abstract of it, to the auditor by the time required, the auditor should make demand for the same; and if the enumeration has not been taken or the abstract be not furnished forthwith, the auditor is to employ one or more persons to take the enumeration, and such persons are to perform the same duties as others in taking such enumeration, except that he must make

[1] As amended, 85 Laws, 192.

returns directly to the auditor, who is authorized to administer the necessary oaths. The auditor may allow such persons a reasonable compensation out of the school fund in the county treasury, and then proceed to recover the amounts so paid in a civil action, before a court of competent jurisdiction, in the name of the State of Ohio, against the township clerk on his bond, and the amount so recovered is to be paid into the county treasury. 4036.[1]

Auditor to furnish abstract to state commissioner.—The county auditor is required to make and transmit to the state commissioner of common schools, on or before the third Saturday of August in each year, on blanks to be furnished by the commissioner, an abstract of the enumeration returns made to him, duly certified. 4039.[1]

Enumeration in joint sub-district.—The enumeration of a joint sub-district is required to be taken by the clerk of the board of directors, whose duty it is to transmit a certified copy thereof to the clerk of the board of education of the district in which the school-house is situate, and designate therein the number of youth residing in the respective fractions of townships of which the sub-district is composed; and if such sub-district is composed of parts of two or more counties, the clerk to whom the return is made must transmit a certified copy thereof to the auditor of each county having territory within the sub-district. 4034.

When county line divides original surveyed township.—When parts of an original surveyed township are situate in two or more counties, the auditors of the counties containing the smaller parts of said township are required to transmit to the auditor of the county containing the largest part of the same, certificates of the enumeration of youth residing in the fractional parts of such township within such counties. When it is uncertain which county contains the greatest portion of said township, the certificates are required to be sent to the auditor of the oldest

[1]As amended, 85 Laws, 192.

county. If the land granted by Congress to such township, or fractional township, has been sold, the auditor to whom such certificates are transmitted is required to notify the auditor of state, without delay, that such enumeration has been certified to him. 4037.

District to lose fund if enumeration not taken.—If the enumeration of youth in a district be not taken and returned in any year, such district will not be entitled to receive any portion of the school funds distributable in that year on the basis of enumeration; and if such loss occur to a district through the failure of the clerk of the board of education of the district to perform the duties required of him by law, he will be liable to the district for the loss, which may be recovered by an action in the name of the state, and the money so recovered is required to be paid into the county treasury, and apportioned in the same manner as school funds so lost would have been apportioned. 4038.

CHAPTER XXVII.

STRAYS.

SECTION 1. AS TO THE TAKING UP OF STRAYS.

Who may take up strays, and when.—Any person holding land by deed, title-bond, or lease, for three years or more, and being in possession of the same, may take up any strays running at large within the township where such person resides. 6627.

Description of stray to be recorded by township clerk.—Within three days after the taking up of such stray, the person taking up the same must make an accurate description of the marks, brands, size, color, and supposed age of the stray, and if any alteration has been made in the marks or brands upon the animal, the same are to be particularly described; and the taker-up is required to leave a copy of such description with the township clerk, whose duty it is to record the same in a book to be kept for that purpose, and to post up a copy of the description on the door of his office, or in some other conspicuous place near the same. 6628.

Advertisement.—The taker-up must also, within five days, advertise the stray or strays in writing, by posting up a copy of the description at three public places in the township; and if the strays be of any other kind than hogs or sheep, it is the duty of the taker-up, within five days after taking up the same, to transmit a copy of the description to the clerk of the court of common pleas, whose duty it is to record the same in his stray-book. The stray-books of both the clerk of the county and the township are to be kept subject to public inspection at all reasonable times, and each of said clerks is entitled to re-

ceive from the taker-up twenty-five cents for his services 6628.

Proceedings when stray is not claimed.—If no person claims and proves his right to the stray within twenty days after the advertisement, the taker-up must go before a justice of the peace within the township, and make oath when and where he found such stray or strays, and that he neither trimmed, docked, nor altered the brands or marks of such stray or strays, or suffered the same to be done, or if any such alteration has been made to his knowledge, he should state the same. 6628.

No. 141. FORM OF AFFIDAVIT.

The State of Ohio, *County,* *Township, ss.:*

The undersigned, , being duly sworn, deposes and says that, on the day of , 18 , about o'clock in the afternoon (*or*, forenoon), he took up the following stray animal on the road, near , to wit: One red and white spotted bullock, with the left horn broken off, and the right ear slit; that he has neither trimmed, docked, nor altered the brands or marks of said animal, or permitted the same to be done.

(Signed,) ——— ———

Sworn to and subscribed before me, this day of , 18 .

——— ———

J. P. of *Township.*

Order to appraise.—Upon the making of such an affidavit, the justice must issue an order to two respectable freeholders or householders of the township, to be named in the order, commanding them forthwith to view and appraise the stray, and to return upon oath their appraisement, with an accurate description of the marks, brands, size, color, and supposed age of the stray. The taker-up is to give notice of the order to the parties named. 6629.

No. 142. FORM OF ORDER OF APPRAISEMENT.

The State of Ohio, *County,* *Township, ss.:*

To and , freeholders (*or*, householders), of said township: You are hereby commanded forthwith to view and appraise a certain stray bullock, taken up by and in the possession of . of said township, and to return to me upon oath the brands, size, color, and supposed age of said stray.

Given under my hand, this day of , 18 .

J. P. of said Township.

No. 143. FORM OF APPRAISERS' RETURN.

Pursuant to the order of , justice of the peace of township, county, we, the undersigned, have viewed a stray bullock, taken up by , therein mentioned, and we appraise the same at dollars. The following is a true and accurate description of said stray: Color, mainly dark red, but spotted with large white spots; marks, a slit in the right ear and an apparently accidental breaking of the left horn; size, full-grown medium; age, about five years.

(Signed,)

Sworn to and subscribed before me, this day of , 18 .

J. P. of said Township.

Record of appraisement.—Upon the return of the appraisement, the justice must record the same in his stray-book, together with the names of the taker-up and appraisers; and the justice is entitled to receive fifty cents for his services, from the taker-up of the stray, and no more, even though more than one stray is included in the same entry. 6630.

List of strays, how published.—The county clerk must cause a list of all strays, with the descriptions thereof, to be affixed at the door of the court-house, on the first day of the court held next after such returns have been made to his office. 6630.

Proceedings when taker-up is not a freeholder.—If a person not qualified by his estate in lands as above stated, takes up any stray, any justice of the township, on complaint of a freeholder, should issue his warrant for the removal of the stray from the possession of the taker-up, and its delivery into the custody of any resident of the township having the requisite qualifications. 6631.

No. 144. FORM OF WARRANT FOR REMOVAL OF STRAY.

The State of Ohio, County, Township, ss:

To any constable of said township greeting: Whereas, complaint has been made to me, a justice of the peace of said township, by , a freeholder thereof, that , who is not authorized or qualified by law to take up a stray, has unlawfully taken up a (*here describe the stray*), being a stray in said township, and I, being satisfied of the truth of the premises, do therefore, in the name of the State of Ohio, hereby command you to take said stray from the possession of said , and deliver the same into the custody of a resident of the township, who holds lands in this state, by deed, title-bond, or lease for three years or more, and is in possession thereof; and for so doing, this shall be your warrant.

Given under my hand and seal, this day of , 18 .

—— ——— [SEAL.]
J. P. of said Township.

Proceedings when no freeholder is willing to receive stray.—If no qualified resident of the township is willing to receive the stray, and proceed with it according to law, it is the duty of the officer serving the warrant to suffer the stray

to go at large, subject to be taken up by any qualified person at any subsequent time. 6631.

Strays without the bounds of settlements.—Any person taking up a stray found running at large without the bounds of any settlement of the state, must forthwith go before the nearest justice of the peace, and make oath as required in other cases. (See form, above.) If such taker-up be a freeholder or householder of the county, then the justice is to be governed by the same regulations as in other cases; but if it appear, to the satisfaction of the justice, that such person is not a freeholder or householder of the county, he must require the taker-up to give sufficient security for the safe-keeping and delivery of the stray, agreeably to the provisions of the law. Such security, if given, is to be recorded in the stray-book, and thereupon the proceedings are to be the same as if the stray had been taken up by a freeholder or householder; but if the taker-up fails or refuses to give security, the justice must issue a warrant to any constable of the township, to take the stray into his charge, or deliver it into the charge of some freeholder or householder, who will proceed in the same manner as if such stray had been taken up within the limits of the settlement. 6632.

Proceedings by owner to reclaim stray.—The owner or owners of any stray taken up as aforesaid, on making satisfactory proof of his or their right thereto, before any justice of the peace of the township, within four months after the same was taken up, is entitled to receive such stray or strays with the increase, if any, having first paid as a reward to the taker-up, for each horse kind, one dollar; for every head of neat cattle, fifty cents; for every sheep, hog, goat, above six months old, twelve and a half cents; together with the legal fees paid by the taker-up, and reasonable charges for keeping. 6633.

Proceedings when parties can not agree as to the charges.—If the parties can not agree on the sum to be paid for the keeping of the stray, either of them may apply to any jus

tice of the township to nominate three disinterested freeholders, whose duty it will be to make such allowance for the keeping of the stray or strays as may seem to them to be just, and forthwith certify the same under their hands to the justice upon oath or affirmation; and if the owner fail or refuse to pay the same, together with the fees aforesaid, within forty days thereafter, the taker-up may deliver the stray to a constable of the township to be sold. 6633.

Sale and disposition of proceeds.—The constable is required to give ten days' notice, by advertising, at three of the most public places of the township, of the time and place of the sale. At the time and place named in the advertisement, the stray or strays must be sold to the highest bidder, and the constable, after paying the amount of fees and charges due the taker-up, and deducting one dollar for his own fees, must pay the remainder to the owner. 6633.

When stray vests in the taker-up.—When the appraised value of any stray or strays, of the same species, taken up at the same time, does not exceed seven dollars, and no person appears within four months and proves his or her right to the same, the right to such stray or strays vests in the taker-up. 6634.

Sale of stray when owner fails to appear.—If the valuation exceed seven dollars, and no owner appears within the four months, the taker-up must apply to the justice to whom the return of the appraisement and description was made, for a copy of the same, which the justice is required to give from his stray-book; and such copy must be delivered to a constable of the township, whose duty it is to immediately advertise for sale the stray or strays as described in the copy, at three public places within the township, mentioning the time and place of the sale, which must be fixed at least ten days after the time of advertising. The sale is required to be made at some public place in the township, if of the horse kind; but if of any other

kind of strays, the same may be sold at the residence of the taker-up, between the hours of 10 o'clock A. M. and 4 o'clock P. M., at which time the taker-up should deliver the stray or strays to the constable, take his receipt for the same, and transmit it to the township treasurer. 6634.

No. 145. Form of Notice of Sale.

Sale of Stray.

The undersigned will sell to the highest bidder, at public auction, at , on the day of , 18 , at o'clock A. M. (*or*, P. M.), one stray , unclaimed, and described as follows: (*here insert the description received from the justice*), on the following terms: dollars in cash, the balance payable in nine months, to be secured by an obligation in writing, with two sufficient sureties thereon.

(Date.)

Constable of Township

The sale and proceeds.—The sale must be made at the time and place advertised, to the highest bidder. So much of the amount as may be necessary to pay the costs of taking up, keeping, and sale, including one dollar for the services of the constable, to be paid in cash; the balance to remain upon a credit of nine months, to be secured by an obligation from the purchaser, with one or more sufficient sureties, resident within the township, payable to the township treasurer, or his successor in office. 6635.

No. 146. Form of Obligation.

Know all men by these presents, that we, , as principal, and and , as sureties, are held and firmly bound unto , the treasurer of township, and his successors in office, in the sum of dollars, to

the payment of which we hereby bind ourselves, our heirs, executors, and administrators.

Sealed with our seals, and dated this day of , 18 .

The condition of the above obligation is such that, whereas, said has this day purchased, at constable's sale, a certain stray , for which a credit is given for the sum of dollars. Now, if the said shall pay the said treasurer, or his successors in office, the sum last named within nine months from date hereof, then the above obligation to be void; otherwise to be and remain in full force and effect.

(Signed,) ——— ———

——— ———

——— ———

Disposition of the obligation.—The constable must deliver the obligation to the township treasurer, for the use of the township in which the stray or strays may be taken up, and take duplicate receipts for the same—one of which he is required to file with the township clerk, together with his certificate, stating to whom the property was sold, and the amount for which it was sold. It is the duty of the clerk to file such receipt and certificate in his office, and to charge the treasurer with the amount of the obligation, designating by whom it was given.[1] 6635.

Treasurer to collect bond.—The treasurer is to collect the amount of the obligation, and, if necessary, may bring suit for that purpose. If the owner of the stray, within two years after the time of the sale, prove his right to the same, to the satisfaction of a justice of the peace of the township,

[1] The law relating to strays does not apply to hogs left by some one unknown in the pens of a company engaged in the business of receiving and caring for live stock brought to market; (therefore the township trustees have no right to the possession of the unclaimed proceeds of such hogs.) Millcreek Tp. *v.* Brighton Stock Yards Co., 27 Ohio St. 435.

the justice may issue his order to the treasurer, requiring him to assign the bond, or any judgment obtained thereon, to such owner, or to pay over to him the money, if it has been collected. 6636.

Compensatiun, when not allowed, etc.—No compensation or fees can be allowed to any person for taking up any stray animal from the range where such animal usually runs at large, or when the owner of such stray is known to the taker-up, except in case of a stallion one and a half years old, or over, found running at large out of the inclosed ground of the owner or keeper. In such case, notice must forthwith be given to the owner or keeper, if known; and if he does not appear within three days and pay to the taker-up two dollars, as a compensation for his trouble, the taker-up must proceed to advertise the horse, and the same proceedings are to be had, as above set forth, with respect to other stray horses. The taker-up may, after the expiration of twenty days, cause the horse to be gelded, at the risk and expense of the owner. 6627, 6638.

Penalty for abusing, selling stray, etc.—Any person taking up a stray, who abuses or permits it to be abused so that it dies, or is lessened in value, or takes or causes the same to be taken out of the township, more than two days at any one time, or by his neglect suffers it to escape, or any person who knowingly purchases a stray contrary to the provisions of the law, becomes liable to the party injured, or to the township trustees, for the full amount of the damages sustained, and costs of suit. Any person taking up a stray horse, mare, or gelding, who in any manner works or uses the same, is debarred from receiving any compensation for keeping the animal. 6637.

Section 2. As to Pounds.

Trustees may erect—The trustees of any township are anthorized to procure or construct an inclosure or pound, wherein animals taken up under the provisions of the law may be confined; and the trustees may appropriate from the township funds an amount not exceeding one hundred dollars, for that purpose. 4209.

Owner of land may impound, when.—If the trustees fail to provide a pound, any owner or lessee of land in the township where the stock is found running at large, contrary to law, may detain or keep the same in any field, pen, or stable, which it is provided shall be the same in effect as though the stock were impounded

in a pound erected by the trustees; but no stock running at large contrary to law can be taken up and confined in any private inclosure, where township pounds have been provided according to law. 4209.

Ground-hogs—English sparrows.—Any one killing a woodchuck or ground-hog between the first days of March and November, is entitled to a certificate for ten cents upon presentation of the scalp to the clerk of the township wherein it was killed; but no such certificate can be issued unless there is a "ground-hog fund" in the township treasury raised by levy for the purpose, as the trustees are authorized to do. Such fund can not exceed two hundred dollars in any one year, and the amount remaining unexpended on the first day of December in each year is to be credited to the general fund of the township. The trustees are required to allow the clerk a reasonable compensation for his services under the ground-hog law. No scalp can be redeemed which is taken from any animal killed or captured on the Sabbath day.[1] Any person killing English sparrows is entitled to a bounty of twenty cents her dozen upon the presentation of the heads to the clerk in lots of not less than one dozen. If the clerk is satisfied of the correctness of the claim, he must issue a certificate upon the treasurer, payable out of the township fund, for the amount of the bounty, and destroy the heads. But the clerk can not issue such certificate unless there is a sparrow fund which the trustees are authorized to create out of the general township fund or by a levy for the purpose, the amount not to exceed $200 in any one year, and any unexpended balance remaining on the first day of March each year must be credited to the general fund of the township. The treasurer is authorized to pay such certificates from the sparrow fund.[2]

SECTION 3. WHEN ANIMALS MAY RUN AT LARGE.

Permits, when and how granted.—The county commissioners may grant general permission for horses, mules, cattle, sheep, goats, swine, or geese to run at large in their respective counties; and in counties where such permission has not been given, the trustees of any township may grant special permits to individuals, permitting particular animals therein described to run at large, which special permits are revocable at any time, at the discretion of the trustees, upon three days' notice, in writing, to the owner of the animal; and all permits, general and special, expire on the first Monday of March of each year; but no permit can be granted for any swine to run at large; and in case any person permits swine belonging to him, or under his control, to run at large, he must be deprived of the benefit of any permit issued to him, as to any domestic animal whatsoever, and also of the benefit of any general permit issued by the county commission-

[1] 86 Ohio Laws, 158. [2] 85 Ohio Laws, 140; and 87 Laws, 171.

ers, and be subject to all the fines and penalties provided by law;[1] and it is the duty of all road supervisors to take up and impound all swine found running at large in the roads, and for a failure to perform this duty they are liable to a fine of not less than two nor more than five dollars, and the trustees are authorized to deduct the amount of any unpaid costs or fine from any sum that may be due such supervisor for official services. 4203, as amended April 17, 1880. 77 Ohio L. 318.

Animals may not run at large without permit.—Unless general permission has been given, as above stated, by the county commissioners, or a special permit has been issued by the township trustees, it is unlawful to permit any of the animals named to run at large; and any person so doing incurs a penalty of not less than one nor more than five dollars; and each day the offense is continued, after notice or prosecution, is to be considered a separate offense.[1] 4202.

Animals may be taken up.—Any person finding any of such animals at large, contrary to law, may, and any constable, road supervisor, or marshal of a city or incorporated village must, on view or information, take up and confine the same forthwith, in the pound or elsewhere, giving notice to the owner, if known, and, if not known, by posting notices describing such animals therein, in at least three public

[1] The grant of authority to the commissioners of counties and trustees of townships to grant general and special permission for the animals named to run at large, as conferred by section 2 of the act of April 13, 1865, was within the scope of legislative power.

The authority thus conferred upon these boards respectively may be exercised by them, notwithstanding the individual members of the board thereby relieve themselves from the duty imposed by section 1 of the act, of restraining their own animals from running at large. A special permit, granted by the township trustees at a special meeting of the board, is valid, although two trustees only be present, and the person to whom the permit is directed be one of the trustees composing the board granting it. The peculiar nature of this power is such that, in our opinion, the personal benefit to the trustee does not disqalify him for acting in the premises. Fox *v.* Fox, 24 Ohio St. 335.

[1] Under section 6 of the act of April 13, 1867, "to restrain from running at large certain animals therein named" (S. & S. 1), cattle found running at large may be taken up, whether they are at large with or without the consent or fault of the owner. Within the meaning of the section, the animals named in the act are at large 'contrary to its provisions" when they are at large without the permission provided for in the second section of the act. Sloan *v.* Hubbard, 34 Ohio St. 583.

places within the township; and if the owner does not appear and claim his property, and pay all charges for taking up, advertising, and keeping the same, within ten days from the date of the notices, the animal may be proceeded with as hereinbefore set forth with respect to other strays. The mere fact that any such animal runs at large, is to be taken as *prima facie* evidence that the animal is so running at large contrary to law; but if it be proven that the animal escaped from the owner or keeper, without his knowledge or fault, then it must be given up to the owner or keeper, upon payment of a reasonable compensation for taking up and keeping the same.[1] 4207.[2]

Fees of taker-up.—The person or officer taking up any such animal is entitled to receive from the owner the following fees, in addition to those authorized by the law regulating strays: For taking up and advertising each animal of the horse kind, or mule, one dollar; each head of neat cattle, seventy-five cents; each swine, fifty cents; each sheep or goose, twenty-five cents; and also reasonable pay for keeping the same. 4208.

Owner liable for damages done by such animal.—The owner of any such animal running at large contrary to law, is liable for all damages done by the animal upon the premises of another, without reference to the fence which may inclose the premises; but no such liability arises in case of damage caused by the animal to a railroad. 4206.

Notice must be given before prosecution is commenced.—No prosecution can be commenced to recover the penalties mentioned in this section, until at least one day's notice has been given to the owner or person having the animal in charge; and it is a sufficient defense to such prosecu-

[1] The right given by the sixth section of the act, to take up and confine animals running at large, is not affected by the failure of the township trustees to establish a pound under the authority conferred by the supplementary act of April, 12, 1867 (S & S. 9). Sloan *v.* Hubbard, 34 Ohio St. 583.

[2] As amended, 81 Laws, 105.

tion to show that the animal was at large without the knowledge of the owner or keeper, and without fault of his. 4205.

How suits for penalties are to be brought, etc.—Suits to recover penalties for such offenses are to be brought in the name of the State of Ohio, before a justice of the peace or court of competent jurisdiction where the offense was committed; and all such penalties collected must be paid into the treasury of the township, for the benefit of the common schools. 4204.

SECTION 4. AS TO DRIFTS.

Who may take up.—Any person may take up and secure any boat, water-craft, raft, piece of raft, or other valuable property gone or going adrift, within this state, or any of the waters adjoining thereto.[1] 6639.

Description and appraisement.—If no person claims and proves his right to such boat, water-craft, raft, piece of raft, or other property, within thirty days thereafter, the taker-up must cause the same to be viewed by two freeholders or householders of the township, whose duty it will be to give a description of the property in writing, together with the value thereof, and to certify the same under their hands, which certificate the taker-up must deliver, within five days, to some justice of the peace of the township. 6639.

[1] Plaintiffs took up a raft adrift upon the Ohio river, on the 20th day of May, 1849. On the 29th, it was forcibly taken out of their possession by the agent of the defendants, and on the 30th of the same month, it was seized and taken again into possession by the plaintiffs, by means of a writ of replevin. *Held*, that after the property had gone again into the possession of its owners, even though taken by them forcibly, the persons who took it up had not the right to recover it by the writ of replevin. Coverlee *v.* Warner, 19 Ohio, 29.

No. 147. FORM OF DESCRIPTION AND APPRAISEMENT.

The undersigned, householders of township, at the request of , who found the property herein described adrift in the waters of , have this day viewed the same, and find it to be a skiff feet long and feet wide in the center, with rowlocks, and painted color, in good condition, but without oars; and we value the same at dollars.

(Date,) (Signed,) ——— ———

———

Certificate to be recorded.—The justice to whom the certificate of appraisement is delivered, must make a record thereof in his stray-book, for which service he is entitled to receive the sum of twenty-five cents from the taker-up. Within fifteen days the justice must transmit the certificate to the clerk of the court of common pleas, with the sum of twenty-five cents to be advanced by the taker-up, and the said clerk is to record the same in his stray-book, and file the original in his office. 6640.

When taker-up may be required to give security.—If the taker-up be not a freeholder or householder of the county, the justice may, if he deem it necessary, require him to give security, as in the case of stray animals; and on neglect or refusal to give the security, the justice may take the boat, or other property, into his possession, or deliver it to a freeholder of the township, who is willing to take charge of it; and the same proceedings are to be had as in the case of stray animals. 6640.

When drifts vest in taker-up.—If the appraised value of the boat or craft does not exceed five dollars, or eight dollars, if it be taken up on the shores of Lake Erie; and if no person appears within two months after the taking up thereof and proves his right to the property, the drift vests in the taker-up. 6642.

When and how drifts must be sold.—If the valuation ex-

ceeds five dollars, and the owner does not appear and prove his right to the same within two months, the taker-up must deliver it to a constable of the township, and take his receipt therefor; and the constable must proceed to advertise, sell, and pay over the money arising therefrom in the same manner as in the case of stray animals, and the owner of the property sold is likewise entitled to receive the amount out of the township treasury. (See sec. 1 of this chapter.) 6642.

How owner may reclaim drift.—The owner of a drift, on proving his right thereto within two months after it is taken up, and paying the taker-up such reward as the justice may deem reasonable, together with the fees allowed by law, is entitled to receive the property. 6641.

SECTION 5.

Proceedings as to strays where a new township is set off.—When a new township is set off, within which there are any strays, which, pursuant to law, ought to be sold, it is the duty of the justice to whom the appraisement of the stray is returned, to proceed as in other cases, and of the constable to proceed with the sale in like manner; but the proceeds of the sale must be paid into the treasury of the new township, for the use of the same. 6643.

Stray-book.—It is the duty of each justice of the peace to keep a stray-book of sufficient size, and should his office become vacant, the book is to be delivered to the clerk of the township, whose duty it is to deliver the same to the successor in office of such justice; and the successor must furnish a copy of the appraisement of any stray in the same manner as if he had been in office at the time the appraisement was made. 6644.

Compensation of freeholders.—In any case where householders or freeholders perform any services under the provisions of the law relating to strays or drifts, they are entitled to fifty cents for each day they may be actually

employed to be paid by the taker-up of the stray of drift. 6647.

Penalty for neglect of duty.—Any person neglecting to perform any of the duties required by the law relating to strays or drifts, forfeits a sum of not less than one nor more than one hundred dollars, to be recovered by an action before any court of competent jurisdiction; and is also liable in damages to the party injured. It is made the duty of the township treasurer to sue for, collect, and pay over all moneys arising by virtue of any forfeiture incurred under the stray-laws. 6645.

Suits under stray-laws.—All suits on behalf of the township under the stray-law, are to be prosecuted by the treasurer, in the name of the trustees of such township. 6646.

CHAPTER XXVIII.

TOWN HALLS.

When not exceeding two thousand dollars in value.—When it is desired to erect a town hall, or township house, the cost of which is not to exceed two thousand dollars for both house and grounds, the trustees must submit the question to a vote of all the electors of the township, at a general election; and, for that purpose, they are required to give at least thirty days' notice of such submission, by posting up written notices, in at least five of the most public places in the township wherein the vote is to be taken, at the usual place of holding elections.[1] 1443.

No. 148. Form of Notice.

To the Electors of Township, County:

You are hereby notified that the question, whether or not a tax shall be levied for the purpose of erecting a township house, for this township, at a cost of not more than two thousand dollars for both house and grounds, will be submitted to you, at the general election to be held on the

[1] Under the provisions of the act "for the incorporation of townships," passed March 14, 1853 (S. & C. 1565), and the act relating to town halls, passed April 2, 1866 (S. & S. 784), township trustees when authorized to *erect* a town hall for the people of a township, and to purchase ground therefor, *if necessary*, may, in their discretion, with the money raised for that purpose, purchase and cause to be erected a town hall in the second story of a building, without purchasing or owning the entire building or the ground on which it stands. New London Township *v.* Miner, 26 Ohio St. 452.

day of , 18 , at the usual place of holding elections in the township.

(Date.)

____ _____
____ _____
____ _____

Trustees of Township

____ _____

Clerk of Township.

When house may be erected.—If a majority of the ballots cast at such election be in favor of the tax, the trustees are authorized to levy the same, and to make all necessary contracts for the purchase of the ground and erection of hall, in any manner they may deem most expedient. 1443.

When more expensive town hall may be built.—In any township in which a town hall, or the removal, improvement, or enlarging of a town hall, costing more than two thousand dollars, is desired, the trustees may submit the question to the electors, and for this purpose are required to cause the clerk to give notice thereof, and of the estimated cost, by written notices, posted up at not less than three public places within the township, at least ten days before the spring or fall election. 1479.

Ballots for town hall election.—At such election the electors in favor of the hall, removal, improvement, or enlargement, are required to put on their ballots, "Town hall, Yes," and those opposed, "Town hall, No." 1479.

When tax can be levied for town hall, and limit thereon.—If a majority of all the ballots cast at the election are in the affirmative, the trustees are required to levy the necessary tax, but not in any year exceeding four mills on the dollar of valuation, and such tax can not be levied under such vote for more than seven years. 1479.

Bonds may be issued in anticipation of town hall tax.—The trustees may, in anticipation of the collection of taxes, borrow money and issue bonds therefor, bearing interest,

not exceeding seven per cent., payable annually, for the whole or any part of the amount required. 1479.

Erection of town hall.—After such affirmative vote, the trustees may make all needful contracts for the purchase of a site, and the erection of a town hall, or the improvement or enlargement thereof. 1480.

For forms of advertisement for bids, building contract, and bond to secure the same, see *ante*, Chapter XXV, "School Property."

Control and leasing of town hall.—The trustees have control of the town hall, and may lease so much thereof as may not be needed for township purposes, either by the year or for shorter periods, to private persons, or for lectures or exhibitions, in all cases having the rent paid in advance or fully secured; and the rents received may be used for the repair or improvement of the hall so far as needed, and the balance for general township purposes. 1480.

Union of township and municipality to build hall.—The electors of a village or city of the third or fourth grades of the second class, and the electors of the township in which the municipality is situated, holding separate elections on ten days' notice, to be given at the request of ten freeholders of each, by publication in a newspaper published in or of general circulation in the township, may, if both so determine by such vote, unite in the erection of a public hall. The notice in the township must be given by the clerk, on the order of the trustees, on the application of ten freeholders of the township not residing in the municipal corporation. 2563, 2564.

Where and on what terms hall may be erected.—The hall may be erected on a public square of the city or village or elsewhere, as the council and trustees may determine, and for this purpose they may purchase ground; such purchase may be made, and such hall erected, enlarged, improved or repaired, and occupied, on such terms and conditions as the council and trustees may agree upon. 2565

Leasing the hall.—Such hall, or part thereof, may be leased for private offices, lectures, or like purposes, for such length of time and upon such terms as the council and trustees may agree upon; the amount received therefrom to be divided equitably between the municipality and the township, and the respective portions to be paid into the treasury of each by the party receiving the same. 2566.

Rent to be collected in certain cases.—Whenever any such hall or any room or rooms therein may be used by any officer of the city, village, or township, or any justice of the peace, for the transaction of any other than public business, either by himself or partner, it is the duty of the trustees of such township, or of the trustees and the council acting together, as the case may be, to collect from such officer or parties in business such sum for rent as may be just and equitable. 2567.

CHAPTER XXIX.

TOWNSHIPS.

SECTION 1. NEW TOWNSHIPS, OR CHANGE OF BOUNDARIES.

County commissioners may alter boundaries.—The county commissioners may alter or change the boundaries of any township or townships, or partition any township or townships among other townships within the county, by attaching a part of one township to another, or by dividing one township and attaching the parts to other townships, or by laying off and designating a new township from the territory of one or more townships of the same county. 1377.

Petition for change.—Before any order changing the boundaries, or forming a new township, can be made, a petition praying for such change or formation, and showing that the same is expedient or necessary, must be presented to the commissioners, signed by a majority of all the householders residing within the bounds of the township or townships to be affected.[1] 1377.

Notice of application.—At least thirty days' notice of the intended application must first be given by advertisement at three public places within the bounds of the territory proposed to be petitioned or changed. 1378.

Funds of divided township.—In case of a division or partition of any township, the funds in the treasury of such township are required to be apportioned to the township

[1] Where a new township is set off, all persons residing within its limits, and who have resided there long enough to obtain a legal settlement in the original township, have a legal settlement in the new township. Williamsburg Tp. *v.* Jackson Tp., 11 Ohio, 37.

or townships to which portions thereof may be attached, or the new township or townships established, to the extent the same were collected from the territory attached or established into a new township. 1377.

Order for change and record thereof.—The commissioners, when satisfied that the proposed change is expedient or necessary, may order the same to be made, and must cause the boundaries of the township or townships so changed or altered to be recorded in a book to be kept for that purpose. 1378.

Dispute as to boundary, how settled.—Whenever any boundary line between two townships is in dispute, the commissioners of the county are required, upon application of the trustees of one of the townships, and upon notice, in writing, to the trustees of the townships interested, and after thirty days' notice published in some newspaper of the county, to establish the boundary line, and make a record of the same in a book kept for that purpose. 1379.

Area of township.—No township can be laid off having less than twenty-two square miles, or have its boundaries changed so as to reduce its territory below that quantity, unless such township includes a city or incorporated village. 1377.

For the act providing for establishing corner-stones of all townships and sections in Hamilton county, see 88 Laws, 335.

SECTION 2. ELECTION IN NEW TOWNSHIP.

When a new township is formed, the county commissioners must forthwith give notice, by advertisement in three public places in such township, at least ten days before the time, of the time and place of holding an election for township officers; and the electors of such township will assemble at the time and place designated, and then and there elect township officers, and the officers so elected hold their offices until the next annual township election, and until their successors are elected and qualified. (As to manner of holding election, see *ante*, chapter on "Elections.") 1441.

SECTION 3. DEBTS AND ACCOUNTS OF NEW TOWNSHIPS.

Auditor to open account with new township.—It is the duty of the auditor of any county, wherein a new township is formed, immediately after his semi-annual settlement with the treasurer of the county, to open an account with such new township in the same manner he is required by law to open an account with other townships. In such account he must credit the new township with such portion of all moneys with which he would otherwise be required by law to credit the township or townships out of which the new township was created, as arise from taxes collected in, or from moneys distributable to, the territory embraced in such new township; and he is authorized to charge the original townships respectively with the amounts so taken from them and credited to the new township. 1048.

Contracts and debts not affected by change of lines.—Whenever any township is altered, diminished, or in any way changed as to territory, the original township, and all parts and portions of the same, remain liable on all contracts, engagements, or liabilities, to the same extent as if no such change had occurred. 1385.

Bonds may be issued jointly.—When a township has been divided into two or more parts subsequent to the original issue of bonds, in aid of or for purposes of public improvement, it is competent for the authorities of the parts so constituted, jointly, to issue new bonds for the amount becoming due. 1489.

Meeting of trustees of divided township.—The trustees of said township so constituted out of the division of a township, as aforesaid, are required to meet annually, within thirty days after the first Monday of April in each year, and jointly assess and levy on the property, real and personal, taxable within the limits of the original township, which has been divided, the taxes necessary to pay the interest of said bonds, and also such sum as seems to them

expedient for the redemption of the principal named in such bonds. 1490.

Assessment of taxes in case of change.—The trustees of the township, which, in case of such change or division retains the original name, in levying a tax for the payment of debts contracted prior to the change, must procure a certified abstract from the auditor (or auditors, in case parts of the township have been attached to townships in different counties) of all the taxable property situate in such attached portion or portions, together with the names of the persons owning the same, and make the levy for the payment of such debts on all the taxable property within the boundaries of the township as it was before the change, and certify an abstract thereof to the auditor; or in case parts of the township have been attached to townships in different counties, then the trustees must certify an abstract of the tax levied upon the property in such parts, respectively, to the auditors of the respective counties, together with the names of the persons assessed and the amount assessed upon each; and the auditor or auditors must enter the same upon the duplicate, designating the persons taxed, and for what purpose the levy was made. 1386.

Collection and payment of such taxes.—Such taxes are to be collected as in other cases, and the treasurer or treasurers of the counties collecting the same must, on demand, pay over to the treasurer of the township retaining the original name, on the order of the trustees, after each semi-annual settlement, all moneys that may have been collected for such township, and is entitled to the same fees, and subject to the same liabilities as in other cases. 1386, 1387.

SECTION 4. NAME OF TOWNSHIP.

Name of new township.—The county commissioners are required to give to every new township laid off by them such appropriate name as they may think proper; but no two

townships within the same county can be incorporated by the same name. 1378.

Change of township name.—Upon petition by a majority of the electors of any township, and good cause shown, the county commissioners may, if they deem necessary, alter the name of the township. 1384.

Notice of the application.—Thirty days' previous notice of the intended application for a change of name must be given, by advertisement posted in at least three public places within the township; and it is provided that such change shall in nowise affect the right of property or the internal concerns of the township. 1384.

SECTION 5. TOWNSHIP POWERS.

All townships of the state are declared bodies politic and corporate, capable of suing and being sued, pleading and being impleaded, in any court of this state,[1] and have the power to receive any devise, bequest, or deed of gift, for the conveyance of real estate or personal property to the township for the benefit of the township, for any useful purpose.[2] 1376.

Gift property held for benefit of township.—Any property so deeded or devised to the township, is to be held by the trustees and their successors in office, in trust for the benefit of the township, for the uses and purposes specified. 1376.

Real estate may be received to secure or pay debt.—The trustees may accept a conveyance of real estate when it is necessary to secure or pay any debt due the township, and may sell or convey any real estate received for such pur-

[1] Suits against the township should be brought against the trustees thereof, in their corporate capacity, but it is unnecessary and improper to give their individual names. Harding *v.* New Haven Tp., 3 Ohio, 227.

[2] Civil townships have always existed in this state for the purposes of local administration. Board of Education of Fairfield Township *v.* Ladd. Adm'r, 26 Ohio St. 210, 213.

pose, and apply the proceeds to the fund to which such debt or claim belonged. 1376.

Change of boundaries by corporation.—If the limits of any municipal corporation do not comprise the whole of a township, or if, by change of the limits of such corporation or otherwise, they include territory lying in more than one township, and the council of the corporation, by a vote of a majority of the members thereof, petition the county commissioners for a change of township lines so as to make them identical, in whole or in part, with the limits of the corporation, the county commissioners may, on presentation of such petition, with the proceedings of council duly authenticated, change the boundaries of the township or townships accordingly. 1380.

When the corporation is in two or more counties.—When the corporation is situate in two or more counties, the petition for change of boundaries may be made to the commissioners of the county in which such change is proposed, or if the change is to be made in two or more counties, then to the commissioners of the several counties in respect to the territory situate within them respectively. 1383.

Remaining territory outside of corporation, how disposed of —If, in making such change, any township not having within its limits a city or incorporated village is reduced in territory to less than twenty-two square miles, such township must be annexed by the commissioners to a contiguous township, or territory from other township or townships, must be annexed to it so as to form a new township, as in their opinion will best promote justice and the public convenience. 1381.

To what territory township to be annexed.—Whenever the change of boundaries of a township is required by reason of the extension of the limits of a corporation, the change must be made by annexation to the township in which the corporation, or the greater part of it, was before situate

of such parts of other townships as may be covered by such extension. 1382.

Effect of absorption of township by corporation.—Whenever the corporate limits of any city or incorporated village become identical with those of a township, then the offices of township trustees, township treasurer, and township clerk cease to exist, and the powers and duties of the trustees vest in and are to be performed by the council, except as to binding out apprentices and administering relief to the poor, which are to be performed by the infirmary directors. 1623.[1]

Successors of clerk and treasurer.—The duties of the clerk and treasurer of such township are to be performed by the clerk and treasurer of the corporation, and any money in the treasury, or due the township, must be paid over to the treasurer of the corporation. 1625.

Property to be transferred.—All property, moneys, books, papers, accounts, vouchers, or documents pertaining to the township or its business, must be transferred by the proper officer to his successor in the corporation. 1626.

Suits and judgments to be transferred.—All suits pending and judgments recovered by or against any such township, together with all rights, interests, claims, and demands, in favor of and against the same, may be continued, prosecuted, collected, or enforced by or against the corporation; and all suits authorized by law to be brought by or against such township or township trustees, may be prosecuted by or against the corporation. 1627.

[1] As amended, 87 Laws, 370.

CHAPTER XXX.

TRUSTEES OF TOWNSHIP.

When elected.—One trustee of each township is required to be elected annually, at the election held on the first Monday of April, and in case two or more persons have the highest and an equal number of votes for the office of trustee, or any other township office, the clerk and judges of election are required to determine, by lot, which of the persons is duly elected, and the trustee elected is to hold for three years and until his successor is elected or appointed and qualified. 8, 1442, 1448.[1]

At the first election of a new township three trustees are to be elected: the one receiving the highest number of votes to serve for three years, the one receiving the next highest number for two years, and the one receiving the next highest number for one year. If any two receive an equal number, they are to determine by lot, at the first meeting of the board thereafter, the terms for which they shall hold. 1448.

Oath of office.—Within ten days after his election, and before entering upon the duties of his office, each trustee must take an oath or affirmation before the township clerk, or other officer authorized to administer the same, faithfully to discharge the duties of said office. 1453.

The act of March 8, 1886, lengthened the term of office of township trustees to three years, but provided that at the first election thereafter three trustees should be elected to hold respectively for one, two, and three years.

No. 149. Form of Official Oath.

The State of Ohio, *County,* *Township, ss:*

Personally appeared before me, the undersigned, clerk of said township (*or*, other officer), on the day of , 18 , at my office in said township, the undersigned, , and then and there made solemn oath (*or*, affirmation) that he will support the constitution of the United States and the constitution of the State of Ohio, and faithfully discharge his duties as trustee of said township of , in said county of during his continuance in office.

Sworn to before me, and subscribed in my presence, this day of , 18 .

Clerk of Township.

[1] As amended, 83 Laws, 28; 85 Laws. 131, and 87 Laws, 118.

Record of oath.—The township clerk is required to record the trustees' official oath, if the same be taken before him, or the certificate thereof, if the same be taken before any other officer, and for that purpose the trustee taking the oath is required to procure a certificate thereof from the officer administering the same, and deliver it to the clerk. 1454.

Failure to take oath to be deemed a declination.—If the trustees or other officers elected or appointed to a township office fails to take the oath of office within ten days after receiving notice of his election or appointment, it is provided that he shall be deemed to have declined to accept, and the vacancy is to be filled as in other cases. 1455.

Vacancy in office of trustee, how filled.—When a township, for any cause, is without a board of trustees, or there is a vacancy in the board of trustees, the justice of the peace of the township holding the oldest commission, or, in case the commissions of two or more of the justices are of even date, the justice oldest in years is required to appoint a suitable person or persons, having the qualifications of electors in such township, to fill the vacancy or vacancies, until a successor is elected and qualified for the unexpired term, which it is provided shall be done at the first annual township election that happens more than ten days after the vacancy occurs, and the justice of the peace discharging that duty is required to make out a certificate, in writing, of such appointment or appointments, and file the same with the township clerk, whose duty it is to record the same. 1452.[1]

Vacancies in other township offices, except that of justice of the peace, are to be filled by appointment by the trustees, and all appointees are to be notified in the same manner, take the same oath, give the same bond, and perform the same duties as if elected. 1450, 1451.

Orders on treasurer.—For all demands on the township treasury allowed by them, the trustees are authorized and required to draw and sign an order, but the same must be countersigned by the clerk before payment thereon can be made. 1512.

No. 150. FORM OF ORDER.

To Treasurer of Township:

Please pay to , or order, the sum of dollars out of the fund, being the amount due him for , and allowed, according to law.

——— ———
——— ———
——— ———

Clerk of Township. *Trustees.*

[1]As amended, 83 Laws, 28.

Annual settlement.—The trustees are required to meet with the supervisors, treasurer, and clerk, on the first Monday of March annually, at the usual place of holding the township elections, and settle the accounts of the supervisors and treasurer, and also to examine and settle all other demands against the township.[1] 1457, 1458.

Meetings.—The trustees should meet at fixed intervals, sufficiently often to transact all the business of the township in a proper and efficient manner. It is the duty of the clerk to attend and keep a record of the proceedings at all meetings, regular or special. 1502.

Judgments against townships, how paid.—When a judgment has been rendered against a township, it is the duty of the justice of the peace, or the clerk of the court wherein the judgment was rendered, to make out a certi-

[1] By "regular meeting," is meant, no doubt, such meeting as the law requires to be held at a stated time and place. There are only two such meetings (annually) required by law. And the business of each is specially named in the statutes, to wit: On the first Monday of March, at the usual place of holding elections, for the purpose of settling accounts, districting roads, etc., and on the first Monday of April, at the same place, for the purpose of holding an election for township officers. That other or special meetings of the trustees are authorized, though not expressly required, by law, is clear, from the fact that many duties are enjoined upon the trustees which can not be properly discharged at the regular meetings: for instance, affording immediate relief to the poor, removing paupers, etc.

Not only are the statutes silent as to the time and place for holding a special meeting of the trustees, but no previous notice is required to be given to the trustees. It therefore follows that whenever and wherever, within the township, the trustees may meet, they may proceed to transact any lawful business for the township, other than that which is required to be done at a regular meeting. Per McIlvaine, J., in the State *v.* Wilkesville Tp., 20 Ohio St. 293.

Special meetings of the board of township trustees may be held at any time and place within the township, and without previous notice to all the trustees. Ibid.

fied abstract of the judgment and the costs, and a constable of the township, or the sheriff or coroner of the county, must, when so directed, serve an attested copy of the abstract upon the clerk of the township against which the judgment was rendered. The clerk, upon receipt of such abstract, must forthwith notify the trustees, and unless the suit has been appealed, or taken on error to a higher tribunal, they are required to draw an order in favor of the justice or clerk of the court, on the township treasurer, for the amount of the judgment and costs, which order the treasurer is required to pay on presentation, if he have any appropriate funds in his possession. 1461.

Taxes for township purposes.—The trustees may levy such rates of taxation for township purposes, including the relief of the poor, but not including the support of the common schools or the payment of the interest and principal of the township debts, as they may certify to the county auditor to be necessary, not exceeding the following rates: One mill on each dollar of the taxable valuation of the property of the township which does not exceed two hundred thousand dollars; eight-tenths of one mill on each dollar of taxable valuation exceeding two hundred thousand dollars, and not exceeding three hundred thousand dollars; one-half of one mill on each dollar of taxable valuation exceeding three hundred thousand dollars, and not exceeding five hundred thousand; four-tenths of one mill on each dollar of valuation exceeding five hundred thousand dollars, and not exceeding eight hundred thousand dollars; and one-fourth of one mill on each dollar of taxable valuation exceeding eight hundred thousand dollars, and for the payment of the interest and principal of the debts of the townships, such sum as the trustees may determine is necessary for that purpose.[1] 2827.

[1] A township having issued bonds illegally, and paid the interest thereon for several years, is not in a position to ask a court

Poor tax in counties without infirmaries.—In any county where there is no county infirmary, the township trustees may levy a further tax not exceeding one mill and five-tenths of one mill on each dollar of taxable property for the relief of the poor, to be applied solely to that purpose. 2827.

Additional poor tax.—The trustees of any township which has incurred, or may hereafter incur, liabilities for the relief of the poor, beyond the amount raised by the levy now authorized, may make an additional levy for the purpose of discharging such liabilities, not exceeding six-tenths of one mill on the dollar of taxable property of the township. 2828.

Road tax.—As to additional road tax, see chapter on Road Supervisors, pages 268 to 275.

Certificate of rates.—The rates of taxation must be determined and certified to the county auditor by the trustees, on or before the fifteenth day of May, annually. 2827.

Trustees to perform the duties of fence-viewers.—The trustees are required to perform all the duties formerly required by law of fence-viewers, and are entitled to the compensation prescribed for the payment of such duties. See Chapter X, "Fences and Inclosures."

Penalty for refusal to serve as trustee.—Any person elected or appointed a trustee, who neglects or refuses to serve, must forfeit and pay the sum of two dollars for the use of the township, to be recovered by an action before a justice of the township; and it is made the duty of the township clerk to collect such penalty by suit or otherwise, and pay it over to the township treasurer. But no person can be compelled to serve as a trustee for two years in succession. 1449.

of equity to rescind and cancel the bonds, though they may be invalid in the hands of the holders. Goshen Tp. *v.* Shoemaker, 12 Ohio St. 626.

No township or other tax can be levied without express authority of law. Zanesville *v.* Richards, 5 Ohio St. 589.

Laws, trustees entitled to receive and transmit.—Each trustee is entitled to receive a copy of each volume of the acts of the general assembly which may be issued during his term of office, and must deliver the same to his successor in office, and in case of refusal to so deliver such volumes upon demand, may be required to forfeit and pay a fine of not less than five nor more than fifteen dollars, for the use of the county; to be recovered in an action brought by such successor, before any justice of the peace of the county, in the name of the State of Ohio. 69.

Harbor-masters, may be appointed.—In any township containing a harbor or port, or any lake where vessels are accustomed to lie for the purpose of receiving or discharging freight, which harbor or port is not situated within the limits of a city or incorporated village, the trustees may, if they deem it for the public interest, appoint a suitable person to act as harbor-master, and whose powers and duties they may prescribe, but such powers and duties must be the same, so far as applicable, as are or may be prescribed for harbor-masters in cities and villages. The harbor-master, when so appointed, may hold office for one year, and until his successor is appointed and qualified. The trustees may fix such compensation for the harbor-master as they deem just, not to exceed one hundred and fifty dollars per annum, to be paid out of the treasury of the township, on the order of the trustees. 1488.

Trustees may receive donations for township.—The trustees may receive, on behalf of the township, any donation by bequest, devise, deed of gift, or otherwise, of any property, real or personal, for any township use. 1481.

Trustees may sell unnecessary real estate.—When the township has real estate or buildings which it does not need, the trustees may sell and convey the same when authorized so to do by a vote of a majority of the electors voting at any annual township election. Before such vote can be taken ten days' notice of the intention to submit the question to the electors must be given by the clerk by written notices posted

up at not less than three public places of the township, and if the majority of the electors should vote—"Sale, Yes," then this sale is to be taken as authorized. 1841.[1]

Stone or gravel may be purchased.—The trustees are authorized to purchase suitable stone or gravel, when deemed necessary for the improvement of the public roads of the township; and for the purpose of paying for the same they are authorized to levy and assess upon the taxable property of the township such rate of taxation as will raise any sum not exceeding one hundred dollars in any one year, and the trustees of two or more adjoining townships may jointly purchase such stone and gravel, or may obtain the same by condemnation as provided in the next section. 1482.[2]

When trustees may condemn material.—If the trustees are unable to purchase of or contract with the owner of any gravel bed or other deposit of gravel, or the owner of any stone, timber, or other material, in their judgment necessary for the construction or repair of any road or highway within the township, upon fair and equitable terms, or in case the owner refuses to sell or contract with the trustees for the sale of such material, upon the trustees agreeing to allow a just and reasonable compensation therefor, then they are authorized to condemn for public use said material, in such quantities as in their judgment the public needs require, allowing the owners thereof a just and equitable compensation for the same. And they may purchase or condemn such material at any place in the county or in any adjoining county. 1483.[3]

Appeal to probate court.—An appeal from the amount of the compensation allowed by township trustees for the payment of any material appropriated as aforesaid, for public use, is allowed to the probate court of the county, and the court may order a view, as is provided in cases of appeal from the decisions of the trustees in establishing township roads, or make any other order that may be just and reasonable; and the appellant is required to enter into bond to the state for the use of the township, in the sum of one hundred dollars, with one or more good and sufficient sureties, to the acceptance of the township treasurer, within ten days from the date of the award of said trustees, conditioned for the payment of all costs arising from such appeal, if the com-

[1] As amended, 78 Ohio Laws, 153.
[2] As amended, 87 Laws, 324.
[3] As amended, 88 Laws, 427.

pensation allowed be not increased by the proceedings had in the probate court; which appeal is required to be entered with the probate court, within five days from the filing of the bond with the township treasurer; and no order can lawfully issue for the taking and appropriation of any material mentioned in the preceding section until fifteen days after the same has been condemned, at which time the clerk of the township may issue such order, by direction of the trustees, unless an appeal has been perfected as aforesaid. 1484.

Restraining spread of infectious diseases.—When complaint is made to the clerk of a township, or a reasonable belief exists that the small-pox or any other infectious or loathsome disease prevails in any locality or house therein, or in any adjoining township, not within the limits of a city or incorporated village, the clerk is required to call a meeting of the trustees, and the board, if satisfied after investigation, that such action is necessary, may restrain all persons except physicians and necessary attendants, from frequenting or visiting such house or locality, or coming into such township from an infected locality in any other township, until the danger of infection or contagion therefrom has ceased; and they are required to cause a copy of such order to be posted up in at least three of the most public places in the township.[1] 1462.

Regulations to prevent spread of diseases.—The board of trustees have power to make and enforce all necessary health regulations, to prevent the spread of small-pox or any other loathsome disease within the township, and may restrain persons convalescing from small-pox, or knowing themselves to have been exposed thereto, from coming from infected localities into such townships; and any person violating such order or health regulation after the same has been posted up as provided in the preceding paragraph, becomes liable to a penalty of not less than ten nor more than fifty dollars and costs, to be recovered by the trustees in an action before any justice of the peace of the town-

[1] As amended 79 Ohio Laws, 50.

ship, and when collected the same is to be paid to the township treasurer for township purposes.[1] 1463.

Pay of trustees.—Each trustee is entitled to one dollar and fifty cents for each day's service in the business of the township, to be paid out of the township treasury, and to one dollar and fifty cents for each day's service in the discharge of his duties in relation to partition fences, to be paid in equal proportions by the parties, but in no township can the compensation to be paid any trustee out of the treasury, including services in connection with the poor, exceed one hundred and fifty dollars in any one year. In any township in a county having a population of 21,175, according to federal census, and not having an infirmary, the compensation of the trustees, at one dollar and a half per day, may not exceed two hundred and fifty dollars each, per annum. And it is provided that each trustee shall present an itemized statement of his account for per diem and services to the township, which, before it is allowed, must be verified before a justice of the peace or the township clerk, and by him preserved. 1530.[2]

Plows and scrapers may be purchased.—The trustees are authorized to purchase a sufficient number of plows and scrapers for the use of the township, to be used exclusively for that purpose, and pay for the same out of any money in the township treasury not otherwise appropriated. The plows and scrapers are to be put in the possession of the road supervisors, whose duty it is to take care of the same. If there is not sufficient money in the treasury to purchase the plows and scrapers, the trustees may apply any road labor or tax to that purpose which may be due within the township. 1460.

May purchase statutes or standard work.—The township trustees are authorized to purchase, for their own use, one copy of the revised statutes, or one copy of some standard work containing all the sections of the Revised Statutes of Ohio, applicable to township officers, with forms and citations for their guidance, to be paid for out of any unappropriated funds in

[1] 79 O. L. 50.

[2] As amended, 84 Laws, 35; 86 Laws, 119; and 87 Laws, 236.

the township treasury. The trustees are also required, when there are sufficient unappropriated funds to pay for the same, to purchase for the use of each justice of the peace, not already supplied, one copy of the revised statutes. Copies so purchased are the property of the township, and must be so marked.

All trustees and other township officers are required to deliver to their successors in office all books, records, documents, laws, obligations, papers, blanks, and all other articles and property belonging to their respective offices or deposited with them in their official capacity; and any person who has been such officer refusing to deliver over the same, or any part thereof, forfeits not more than fifty nor less than five dollars, to be recovered by action for the use of the township. 1529.[1]

When the office of trustee ceases to exist.—Whenever the corporate limits of any city or incorporated village become identical with those of any township, then and thereafter the office of township trustee ceases to exist, and the powers and duties of the trustees pass to and vest in the council of the corporation, except such as relate to binding out apprentices and administering relief to the poor, which pass to and vest in the directors of the infirmary. 1623.

Property to pass to corporation.—All property, together with all moneys and credits, books, vouchers, records, files, accounts, documents, and bonds of an official character, in possession of, or under the control of the trustees, whose offices thus cease to exist, vest in the council, and the trustees must cause a full statement of their accounts to be delivered to the council, together with said property and documents. 1626.

May sell stocks.—The trustees of any township owning any railroad, plank-road, or turnpike stock, may cause the same to be sold at public or private sale, as they deem best, and pay the proceeds into the township treasury to the credit of the general fund. 85 Laws, 143.

For the method to be pursued by the trustees in making large contracts for improvements, see the Appendix, p. 383.

[1] As amended, 88 Laws, 42.

The bodies of animals dying from contagious diseases must be burned or buried at least four feet below the surface of the ground by the owner thereof. If the owner neglects or refuses so to do within twenty-four hours after having knowledge of such dead animal, or after notice in writing from the trustees of the township in which it may be found, it becomes the duty of the trustees to dispose of the dead animals as above provided, but they may be removed to a fertilizing establishment, if removed in a water-tight tank. 6923*a*.[1]

The owner so neglecting or refusing to remove dead animals, is liable to a fine of not less than five nor more than twenty dollars, with all costs of suit, and expenses incurred by the trustees in disposing of the animals. Action to recover the fine, costs, and expenses, must be brought by the trustees before a justice of the peace where the owner resides. 6923*a*.[1]

For laws relating to soldiers' bounties, see 86 Laws, 193; 77 id. 294; and R. S. 8164 to 8167.

[1] 88 Laws, 188. See also *ante*, page 217

CHAPTER XXXI.

TREASURER OF TOWNSHIP.

SECTION 1. TOWNSHIP DUTIES.

Election of.—The township treasurer is elected at the election on the first Monday of April, to continue in office for two years from the first day of September following, and until his successor is chosen and qualified. The treasurer and clerk can not be elected at the same election. 1448.[1]

Vacancy, how filled.—In case of a vacancy in the office of treasurer, arising from any cause, the township trustees are required to appoint a suitable person, having the qualifications of an elector, to fill the same until the next annual election occurring more than thirty days after the vacancy happens, when a treasurer must be elected for the unexpired term. 1448.[2]

Oath and bond.—Each person elected or appointed treasurer, previous to the time for entering upon the office, must take an oath or affirmation, before a person authorized to administer the same, faithfully to discharge the duties of his office; and give bond, with security, to the trustees of the township and their successors in office, in such sum as the trustees may deem proper, conditioned for the faithful discharge of his duties, and for the paying over, according to law, of all moneys that may come into his hands by virtue of his office. Failure to take the oath or give bond within the time limited is to be deemed a declination of the office, and the vacancy is to be filled as in other cases. 1453,[3] 1509.

Record of bond and suit thereon.—The bond, after being approved by the trustees, must be lodged with the township clerk and recorded by him—a certified copy of which record may be used as evidence in any court of the state. 1509,[4] 1507.

[1] As amended, 85 Laws, 131.
[2] As amended, 87 Laws, 118.
[3] As amended, 85 Laws, 192.
[4] An action to recover money received by a township treasurer and converted to his own use, as for money had and received

How sureties and new bond may be required of treasurer.—The trustees may at any time require the treasurer to give additional security on his accepted bond, or to execute and deliver a new bond. If the treasurer fail for ten days after service of notice in writing, to give additional security or a new bond, as required, the office is to be considered vacant and must be filled as in other cases. 1509.

No. 151. Form of Bond.

Know all men by these presents, that we, , as principal, and , as sureties, are held and firmly bound unto the trustees of township, in the county of and State of Ohio, in the sum of hundred dollars, to to be paid to the said trustees of the township aforesaid, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators firmly by these presents.

In testimony whereof, we have hereunto set our hands, this day of , A. D. eighteen hundred and .

The condition of the above obligation is such that, whereas, the said has been duly elected and qualified as treasurer of township, county, and State of Ohio, for the term of two years from the day of September, A. D. 18 , and until his successor is elected, or appointed, and qualified.

Now, if the said shall faithfully discharge his duties as said officer, and pay over, according to law, all moneys that come into his hands, by virtue of his office, then this

by the defendant for the use of the plaintiff, is barred by the limitation of six years, and is not governed by the limitation of ten years, provided by the code. Mount *v.* Lakeman, 21 Ohio St. 643.

The action not being on the official bond of the treasurer, the township clerk was not the proper party plaintiff, although the trustees of the township ordered him to sue for and collect the money. Ibid.

obligation will be void; otherwise, to be and remain in full force and effect.

____ _____
____ _____
____ _____

The sureties on the above bond approved by us:

____ _____,
____ _____,
____ _____,
Trustees of said Township.

The State of Ohio, *County,* *Township, ss.*

Before me, clerk of said township, personally came who, being duly sworn according to law, says that he will support the consitution of the United States and the constitution of the State of Ohio; and that he will faithfully discharge his duties as treasurer of township, county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

____ _____

Sworn to before me, and signed in my presence, on this day of , A. D. 18 .

____ _____
Township Clerk.

Certificate of office to be deposited with auditor.—Before drawing any funds from the county auditor, the township treasurer must deposit with him a certificate from the clerk of the township, that he is treasurer of such township, duly elected or appointed, and has given bond according to law. 1047.

Entitled to receive funds.—After depositing the certificate with the auditor, at any time after the auditor's semi-annual settlement with the county treasurer, in February and August, he is entitled to demand and receive from such auditor a warrant upon the treasurer of the county for any

funds therein due the township, and to collect the same from the county treasurer.[1] 1047.

Duties of.—The treasurer is the general custodian of the township funds, and it is his duty to keep the same safely and separate from his private funds, and he should keep an accurate account of the amount received and paid out of each fund.

Road funds, disposition of.—Whenever the township treasurer receives any money from the county treasury for road purposes, it is the duty of the township treasurer to notify the trustees of such receipt. 1510.

Advance receipt of funds from county.—The county treasurer is required to pay, upon the warrant of the county auditor, to each township treasurer, between the 15th and 30th days of December and the 15th and 30th days of June, annually, a sum not exceeding two-thirds of the current collection of taxes assessed and collected for and in behalf of such township, to be held and treated as advance payments upon the amount that may be due at the regular semi-annual periods of settlement in February and August. In Cuyahoga county, such payments are to be made at any time after the twentieth days of June and December. 1123.[2]

Warrant for advance payment.—The auditor must, upon the demand of the township treasurer for such advance payment, issue his warrant in favor of such treasurer for a sum not exceeding two-thirds of the current collection of taxes. 1123.

Deposit of funds.—In any township where a good fire and burglar proof safe is not provided in which to keep the funds belonging to the township, the treasurer may, by consent of the trustees, deposit such funds in some bank or other safe place, subject to the order of the treasurer. But it is especially provided that, in such case, the treas-

[1] The county treasurer may be compelled by mandamus to pay over moneys collected by taxation for the use of a township, when he refuses to do so upon presentation of proper orders. Trustees of Cass Tp. *v.* Dillon, 16 Ohio St. 38.

[2] As amended, 86 Laws, 43.

urer shall be responsible for the safety of the funds; and in the event of the failure of the bank, or insolvency of the person with whom the funds are deposited, the treasurer will be held bound to replace the money. 1513, 1514

Accounts and funds subject to examination.—The books, accounts, and vouchers of the township treasurer, and all moneys in the treasury, are at all times subject to the inspection of the trustees; and it is the duty of the trustees to examine the same at least once in each year, or cause it to be done by some competent person whom they may appoint. 1511.

How money paid out.—No money belonging to the township can be lawfully paid out by the treasurer, except upon the order of the trustees, countersigned by the township clerk.[1] 1512.

Annual settlement.—The trustees are required, at their annual meeting on the first Monday of March, to settle the accounts of the treasurer, and it is the duty of the treasurer to attend such meeting for that purpose. 1458.

Successor, money to be paid to.—The treasurer must pay over to his successor in office all moneys in his hands belonging to the treasury, and must likewise deliver over all books, papers, bonds, and other property pertaining to the township; and for a refusal to deliver the same may, on conviction thereof, before any justice of the peace, be fined

[1] An indictment against a township treasurer for knowingly returning, at the annual settlement a forged and altered order, purporting to be drawn by the township clerk, in favor of a teacher of a sub-district, sustained in Gregory *v* The State, 11 Ohio St. 329.

The written acceptance of an order for school funds, by the predecessor of the township treasurer to whom it is presented for payment, imposes no greater obligation on the latter to pay the same than he would have been under had it been presented without such previous acceptance. The State ex rel. *v.* Liberty Tp., 22 Ohio St. 144.

in any sum not less than five nor more than fifty dollars, for the use of the township. 1512, 1529.

Fees of treasurer.—Each township treasurer is allowed and may retain two per cent of all moneys paid out on the order of the trustees, as his compensation for receiving, safe-keeping, and paying over the same. 1532.[1]

Office ceases when township is absorbed by municipal corporation.—Whenever the corporate limits of any city or village become identical with those of a township, then the office of township treasurer ceases to exist, and the duties of the treasurer are to be performed by the treasurer of the corporation, and all moneys collected or authorized by law to be paid to the township treasurer, must be paid to the corporation treasurer; and the treasurer must deliver over to the treasurer of the corporation all moneys, books, papers, and property of every description, together with a full statement of his accounts. 1623, 1625, 1626.

SECTION 2. SCHOOL DUTIES.

The township treasurer is *ex officio* treasurer of the school funds, and must give a bond, in addition to his bond to the township, with sufficient security, in double the probable amount of money that will come into his hands, payable to the State of Ohio, to be approved by the board of education, conditioned for the faithful disbursement, according to law, of all such school funds as may come into his hands.[1] 4042, 4043.

[1] The office of township treasurer having been abolished in Cincinnati, and the treasurer of Hamilton county being required to hold all moneys in his hands belonging to the township of Cincinnati subject to the orders of the trustees of the township, the county treasurer can not charge the fees allowed by law to township treasurers, for the receipt and disbursement of township funds, in the absence of any law allowing him to do so. Debolt *v.* Cincinnati Tp., 7 Ohio St., 237.

An action against a surety on a township treasurer's bond for

[1] As amended, 82 Laws, 6.

No. 152. Form of Bond.

Know all men by these presents, that we, as principal, and as sureties, are held and firmly bound unto the State of Ohio, in the sum of dollars, to be paid to the state aforesaid, for the payment whereof well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents.

Signed by us, this day of , A. D. eighteen hundred and .

The condition of the above obligation is such that, whereas, the said has been duly elected and qualified as treasurer of township, county, and State of Ohio, for the term of two years from the day of September, A. D. 18 , and until his successor is elected, or appointed, and qualified, and is, therefore, *ex officio* treasurer of the board of education of the township district of said township.

school funds can not be maintained by evidence showing a default only as to township funds. State *v.* Corey, 16 Ohio St. 17.

Under the provisions of the statute, township treasurers are required to give two bonds—one to the *state*, for the faithful disbursement of school funds, and the other to the *trustees* of the township, conditioned for the faithful paying over of *all* moneys that may come to his hands. For school funds, he is required to make settlement with the *board of education;* and for township funds generally, he must settle annually with the *township trustees.*

It would seem, from these statutes, that two distinct funds are contemplated, and that school funds are neither called nor included in the moneys known as township funds. Ibid., per Day, J.

The bond of a treasurer, conditioned that he shall "pay over all money coming into his hands, *on the orders of the board of education,*" instead of being conditioned as the statute requires, is a good statutory bond, and renders the obligors liable for the treasurer's failure to pay over money due to his successor. Creswell *v*, Nesbitt, 16 Ohio St. 35.

Now, if the said shall faithfully disburse, according to law, all school funds which come into his hands, then this obligation will be void; otherwise it will be and remain in full force and effect.

____ _____

____ _____

____ _____

The above bond approved by said board.

Attest:

_____ ____

President of said board.

_____ ____

Clerk of said board.

The State of Ohio, County, Township, ss:

Before me, , clerk of said township, personally came , who, being duly sworn according to law, says that he will support the constitution of the United States and the constitution of the State of Ohio, and that he will faithfully discharge his duties as treasurer of the board of education of the township district of township, county, Ohio, during his continuance in said office, and until his successor is chosen and qualified.

____ _____

Sworn to before me and signed in my presence, on this day of A. D., 18 .

____ _____

Township Clerk.

Filing the bond.—The bond, when executed and approved, must be filed with the clerk of the board of education, who is required to cause a certified copy of the same to be forthwith filed with the county auditor, and it is the duty of such board, at the time of the approval of such bond, to require the treasurer to produce all school money, bonds or securities on hand, and the same are then to be counted by the board, or a committee thereof, in the presence of the clerk of the board, who must thereupon

enter upon the records of the board a certificate setting forth the exact amount of money or securities so found on hand, which record is required to be signed by the president and clerk of the board, and will be *prima facie* evidence that the amount therein stated was actually in the treasury at that date. 4043.

Settlement with auditor.—Within the first three days of September of each year, the treasurer must settle his account as to school funds with the auditor of the county for the preceding year, and present to him a certified statement of all moneys received, showing from whom and on what account, and the amount paid out and for what purposes, and produce vouchers for all payments. The auditor is to examine the vouchers for such payments, and, if satisfied of their correctness, it is his duty to give the treasurer a certificate to that effect, which certificate will operate as a *prima facie* discharge of the treasurer as to the money paid. When the treasurer's term begins on the first day of September, the settlement is to be made by the outgoing treasurer. 4044.[1]

Compensation for settlement.—For making his annual settlement with the auditor the treasurer is entitled to one dollar, and to five cents per mile for traveling to and from the county-seat, to be paid out of the county treasury on the order of the county auditor. 4044.

Penalty for failure to settle.—In case the treasurer willfully or negligently fails to make such annual settlement within the time prescribed, he becomes liable to pay a fine of fifty dollars, to be recovered in a civil action in the name of the State of Ohio; and such amount, when collected must be paid into the county treasury and applied to the use of the schools in the proper districts. The statute requires the auditor to prosecute the suit for such penalty before any justice of the county, immediately upon the failure to report. 4045.

To report to board.—The treasurer must report to the board of education, within ten days after his settlement with the auditor, the amount of money in his hands for school purposes, and the amount in each fund. 4046.

Moneys, books, and papers to be delivered to successor.—At the end of his term of office, it is the duty of the treasurer

[1]As amended, 85 Laws, 192.

to deliver over to his successor all books, papers, moneys, and other property in his hands belonging to the township for school purposes, and to take duplicate receipts from his successor therefor, one of which he must deposit with the township clerk within three days thereafter. 4049.[1]

Surety of, how released.—Any surety of the treasurer of school funds may, at any time, notify the board of education, by giving at least five days' notice in writing, that he is unwilling to continue as surety for such treasurer, and will, at a time specified in the notice, make application to the board to be released from further liability upon the bond of the treasurer; and the surety must also give at least three days' notice, in writing, to the treasurer, of the time and place at which such application will be made. Upon the giving of the requisite notices, it is the duty of the board to hear the application; and if, in their opinion, there is good reason therefor, they may require the treasurer to give a new bond, conditioned according to law, to the satisfaction of the board, within such time as they may direct; and if the treasurer fail to execute such bond, the office is to be deemed vacant, and immediately filled as in case of other vacancies in the office. But the original sureties can not be held released until the filing of the new bond or the expiration of the time fixed therefor, and the cost of the application must be paid by the person making the same.[2] 5841, 5842.

Pay of treasurer.—The treasurer is entitled to receive as his compensation one per cent on all school funds disbursed by him, to be paid on the order of the board, out of the contingent fund; but before any order for the treasurer's pay can be made he must present to the board the auditor's certificate of discharge, above mentioned.[3] 4056.

Disbursement of school funds.—No money can be paid out, unless specially provided by law, except on an order

[1] As amended, 85 Laws, 92.

[2] The township trustees have no power to release a township treasurer from liability upon his bond for school funds. Monroe Tp. *v.* Williams, 13 Ohio, 495.

[3] 80 Ohio Laws, 95, and 85 id. 192.

signed by the president and countersigned by the clerk of the board; and no money can be paid to the treasurer, other than that received from the county treasury, except by the clerk or upon the order of the clerk of the board, who is required to report the amount of such miscellaneous receipts to the county auditor each year, immediately preceding such treasurer's settlement with the auditor. 4047.

Auditor must furnish book.—It is the duty of the auditor to furnish the treasurer of each school district in his county with a suitable blank-book, made according to a form prescribed by the state commissioner of common schools, in which the treasurer is to make a record of all school moneys received and disbursed within the school year, showing the amount of money received from the county treasurer; all sums received from other sources on the order of the clerk; the orders paid, from what funds and for what purposes; and the amount of funds in the hands of the treasurer at the close of the school year, for which purpose a separate account of each fund must be kept. 4055.

Method of keeping accounts.—It will usually be found necessary to keep two sorts of accounts—a general account of the funds of the entire district, and a set of sub-district accounts, one of which should be opened with each sub-district in the township. A very simple, and perhaps the best, method of keeping such accounts is to prepare a book, showing, on the one page, the receipts, and on the opposite page, the expenditures. A book prepared in that manner, and ruled as follows, has been found useful in many townships, and highly commended. The same ruling will answer for both the general and the sub-district accounts; but, in the latter case, the heading would, of course, require a slight alteration:

No. 153. Form of

, Treasurer of Education of Township, County, in account with School Fund.

Date.	RECEIPTS.	Tuition Funds.	Contin-gent Funds.	Building and Repairs.	Date.	EXPENDITURES.	No. of voucher.	Tuition Funds.	Contin-gent Funds.	Building and Repairs.

Directions for keeping accounts.—Keep the accounts of the several funds in columns as designated. In the front part of the book open general accounts; one for tuition fund, one for contingent, and one for building or repairs—reserving for each as many pages as may be necessary.

For each order paid, make two entries—one to the proper fund in the general account, and the other in the sub-district account.

Money borrowed in anticipation of taxes, upon bonds or otherwise, for buildings or repairs, becomes a part of the building fund.

All moneys received should be entered in the general account, under the head of receipts, as well as in the proper sub-district account. The credits to the several sub-districts will arise from the apportionment made by the board of education. The clerk should furnish the treasurer a certified copy of such apportionment, so that the latter may give the proper sub-district credits.

The general and the sub-district accounts should be balanced at the end of the school year, viz., August 31st.

Funds on hand not to exceed half the penalty of bond.—The auditor must, in no case, permit the treasurer to have in his hands, at any one time, an amount of school funds, over one-half the amount of the penalty in the treasurer's bond. And to enable the auditor to ascertain the amount of funds in the hands of the treasurer, he should obtain a written statement from the clerk of his school district, exhibiting the amount of school funds in the treasurer's hands, as shown by the clerks books, which statement the treasurer must present to the auditor, before an order is drawn on the county treasurer for any school funds, and it is the duty of the clerk to furnish such statement whenever necessary. 4048.

Auditor to furnish copy of apportionment.—Immediately after making the apportionment of school funds, as re-

quired by law, it is the duty of the auditor to furnish the school treasurers and school clerks each with a copy of such apportionment, and give an order on the county treasurer to each school treasurer for the amount of money belonging to the school district, and take a receipt from the treasurer for the same. 3965.

Examination fees.—The clerk of the board of examiners is required to pay to the treasurer of the district all examination fees received by him, within ten days after each meeting, and to file with the clerk of the board of education a statement of the amount. The fees must be applied to the support of teachers' institutes. 4083, as amended, 85 Laws, 196.

Payments by county treasurer to township treasurer.—The county treasurer immediately after his semi-annual settlement with the county auditor, must on demand and presentation of the auditor's warrant, pay over to the township treasurer all moneys in the county treasury belonging to the township, but the township treasurer or trustees may direct that said moneys remain in the county treasury to be thence drawn by the township treasurer, on warrant of the auditor, in sums of not less than one hundred dollars. And any county treasurer is forbidden to retain such money under any other circumstances, and the township treasurer is forbidden to permit him to retain it, under severe penalty. 86 Laws, 168.

APPENDIX.

METHOD OF CONTRACTING IN CERTAIN CASES.

When the trustees or the board of education of any township or school district are authorized to contract for the building, rebuilding, alteration, or repair of any building, bridge, culvert, or other public improvement, the cost of which equals or exceeds ten thousand dollars, and when such trustees or board are required to advertise for and receive proposals for the construction of the same, they must proceed as follows. 794.[1]

How bids shall be taken.—Separate and distinct proposals for furnishing the materials and doing the work, or both, at their discretion, must be taken for each distinct kind of mechanical labor, employment, or business necessary, and in no case where more than one kind is required can any contract for the whole job, or any greater portion of it than is embraced in one trade or kind of mechanical labor, employment, or business, be awarded to any one, unless the separate bids do not cover all the work and materials required, or the bids for the whole, or for two or more kinds of work or materials, are lower than the separate bids in the aggregate. 794.[1]

To whom contracts awarded.—Unless let as a whole or to bidders for more than one kind of work or materials, the awards must be made to the lowest and best separate bidders, and contracts made directly with them. 794.[1]

Security to be taken.—The trustees or board of education must take good and sufficient bond from the contractor, with security to their satisfaction, for the faithful performance of

[1] As amended, 85 Laws, 218.

the work according to the contract, plans, and specifications, but the bond can not exceed in amount fifty per cent of the estimated cost of the building or improvement.[1]

Intoxicating Liquors—How Sale Prohibited.

Petition for election.—Whenever one-fourth of the electors of any township residing outside any municipal corporation petition the trustees for the privilege to determine by ballot whether the sale of intoxicating liquors as a beverage shall be prohibited within the limits of the township outside of any municipal corporation, the trustees are required to order a special election for the purpose, to be held at the usual place or places of holding township elections.[2]

Notice of the election must be given and the election conducted in all respects in the same manner as elections for township trustees, and only those electors of the township residing outside any municipal corporation may vote.[2]

A record of the result must be kept by the township clerk in the record of the proceedings of the trustees, and it is provided that, in all trials for the violation of the law, if the vote be in favor of prohibition, the entry, or a copy certified by the clerk, shall be *prima facie* evidence that the sale, furnishing, or giving away of intoxicating liquors within the township outside municipalities was unlawful from thirty days after the election.[2]

It is further provided that the following form of entry shall be sufficient:

The State of Ohio, *County,* *Township, ss:*

The special election held on the day of , A. D. , within and for said township, under the local option law, resulted as follows:

Whole number of votes "For the sale," ———.

Whole number of votes "Against the sale," ———.

Attest: —— ———, *Township Clerk.*

[1] 794, as amended, 85 Laws, 218. [2] 85 Laws, 55.

Ballots should be written or printed, "Against the sale," or "For the sale," and if the majority be against the sale, then it will be unlawful from and after thirty days from the election for any person in the township, outside any municipality, to sell, furnish, or give away any intoxicating liquors to be used as a beverage, or to keep a place where such liquors are kept for sale, given away, or furnished. The act is not to be construed to prevent the manufacture and sale of cider, or of wine manufactured from the pure juice of the grape cultivated in this state, nor to prevent any legally registered druggist from selling or furnishing pure wines or liquors for exclusively known medicinal, art, scientific, mechanical, or sacramental purposes; but these exceptions are not to be construed as authorizing a place to be kept where wine, cider, or other liquors may be sold, furnished, or given away to be used as a beverage.[1]

The penalty for a violation of the law is a fine of not less than fifty nor more than five hundred dollars, and imprisonment in the county jail not exceeding six months. Indictments need not set forth that the township has availed itself of the local option law, but it will be sufficient to plead that the selling, furnishing, giving away, or keeping a place, was then and there unlawful.[1]

Special tax refunded.—Where a dealer in intoxicating liquors, who has paid the special tax, discontinues his business because the township votes against the sale of liquors under the local option law, he is entitled to have returned to him a ratable proportion of the tax paid for the unexpired portion of the year.[1]

Another election as to prohibiting the sale of liquors may be ordered and held in the same manner at any time after the expiration of two years from the date of the first election.[1]

[1] 85 Laws, 55.

Stallion Keeper's Lien.

Lien on colt for service of sire.—The keeper of any stallion may have a lien on the get of the same for the period of one year after the foaling of the colt or colts, for the payment of the service fee of the stallion, by taking steps as follows:[1]

Affidavit of service to be filled.—Within twelve months from the time of service, the owner or keeper must file with the clerk of the township where the person resides for whose benefit the service was rendered, an affidavit of the amount due such owner or keeper for the service; but where the person for whose benefit the service was rendered resides in the township where the office of the county recorder is kept, or is a non-resident of the county or state, the lien must be filed with the county recorder.[1]

Clerk's fees for filing, etc.—For filing and making copy of the affidavit, or the certificate of the date of filing, the recorder or township clerk is entitled to the same fees as are provided by law for like services in regard to chattel mortgages.[1]

Remedies.—A keeper or owner who misrepresents or fails to publish a correct pedigree of his stallion may, upon proof of such misrepresentation, forfeit his claim for services. The owner or keeper may enforce his lien by replevin of the colt or colts, and after obtaining possession of the same may proceed to sell it, after first giving ten days' notice of his intention to do so to the owner thereof, and after two weeks' notice of the time and place of the sale, by notices posted in five conspicuous and public places in the township where the keeper and owner resides. Out of the proceeds, he may retain the amount due him for the service and the costs of the replevin suit, if any be had, accounting to the original owner for the surplus.[1]

[1] 85 Laws, 262.

Road Districts in Certain Counties.

Acts, applicable only to certain counties, creating township road districts have been passed at various times. The insertion of all of them in this work is impracticable, as it would expand the same beyond all reasonable proportions. Such acts may be found as follows: As to Clinton, Green, Madison and Warren counties, 85 Laws, 163; as to Cuyahoga county, 87 Laws, 101; as to Campaign county, 87 ib., 196; as to Vinton county, 88 Laws, 237; as to Lake and Geauga counties, 86 Laws, 324, and 88 Laws, 268.

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" " " " Sheep back and corners, 250 pages..... 1 25

We would, however, strongly recommend the specially ruled and printed forms of the two above-mentioned books, on account of their being specially adapted to their respective uses.

Township Clerk's Book of Records (Minute Book), for Board of Education.—The Township Clerk is Clerk also of the Board of Education (sec. 3984), and he must record the proceedings of each meeting in a book to be provided by the Board for that purpose, which shall be a public record.

We have sizes of blank books, specially adapted for this purpose, as follows:

Demy size (16 x 11) bound in Sheep, with Russia ends and bands, 350 pages $3 50
Crown size (14 x 9½), bound in Sheep, with Russia ends and bands, 350 pages 2 50
Cap size (13 x 8½), bound in full Sheep, 300 pages 2 00
Cap size (13 x 8½), Sheep back and corners, 250 pages 1 25

Township Clerk's Record of School Funds, for Board of Education, and Township Treasurer's Record of School Funds for Board of Education.—These two last-mentioned books are specially prepared, with printed headings and ruled columns, for keeping a separate account with each fund, both general and sub-district. They have been approved by the State Commissioner of Common Schools, and fully comply with the laws as they appear in the new statutes.

Cap size, strongly bound, each $2 50
Cap size, Sheep back, 120 pages (smaller and cheaper book) 1 25

Record of Township Roads.

Cap size (13 x 8½) substantially bound in Sheep back and corners, 250 pages $1 25

Record of Marks and Brands.

Cap size (13 x 8½), substantially bound in Sheep back and corners, 250 pages $1 25

Record of Strays and Drifts.

Cap size, substantially bound and labeled, 250 pages $1.25
Notice and Description of Stray (for posting), per quire 96 blanks 60

Sub-District Minute Book.—For recording the proceedings at the meetings of local directors.

Crown size (14 x 9½), bound in Sheep, with Russia ends and bands, 350 pages $2 50
Cap size (13 x 8½), bound in full Sheep, 300 pages 2 00
Cap size (13 x 8½), substantially bound in Sheep back and corners, 250 pages 1 25

Sub-District Account Book.—For the use of Clerks of Sub-districts.

Cap size, ruled and special printed headings, substantially bound..... $1 00

Minute and Account Book Combined.—The above two bound together—

Cap size, substantially bound..... $1 50
Cap size, half bound..... 1 00

Election Blanks.

List of Officers Elected, per quire of 96 blanks..... .60

Certificates of Election, each 5 cts.; per dozen..... 35

Warrant and Notice of Election, per quire of 96 blanks.... .60
The same, large size, 14 x 17, per 100..... 2.00

Notice of School Election. Separate forms for Townships and Sub-districts. Per quire of 96 blanks..... .60

Certificate of Election of Sub-District Clerk. (Credential showing his right to a seat in Township Board of Education. Price, per quire of 144 blanks..... .60

Certificate of Election of Local Director..... .60

Improved Poll Books.—Each book is well sewed together, has consecutive marginal numbers, printed in full opposite the voters' names, contains full forms of the oath to be administered to the Judges and Clerks of Elections, full forms of the certificates and entries they must make, and full instructions as to what they must do, to whom and when they must make their returns, etc.

Size A contains spaces for 350 names. Price, single book, 6 cts.; per dozen..... $ .50
Size B contains spaces for 750 names. Price, single book, 10 cts.; per dozen..... 1 00
Size C contains spaces for 1150 names. Price, single book, 15 cts.; per dozen..... 1 50
Size D contains spaces for 550 names. Price, single book, 8 cts.; per dozen..... .75

For School Elections.—We have Poll Books specially designed for this use, with proper head lines, instructions, forms, etc., complete.

Improved Poll Book and Tally Sheet combined, adopted by Board of Elections, of Cincinnati. Per book for 300 names, 10 cts.; per dozen..... 1 00
Price, per book (for 150 names), 5 cts.; per dozen..... .40
" " " " 350 " 6 " " " ..... .50

Tally Sheets for Township Elections.—These contain printed headings and certificates, and are conveniently ruled with blue and red lines, which divide the tallies into groups of fives, tens, and twenties, so that the Election Clerks know, without counting each time they have tallied 25, 50, and 100 votes.

Size A, 23 x 23 inches, spaces for 40 candidates, with tally spaces for about 1200 votes for each candidate, per sheet, 10 cts.; per dozen $1 00

Size B, 14 x 17 inches, spaces for 37 candidates, with tally spaces for 400 votes for each candidate, per sheet, 5 cts.; per dozen ..... .50

SAME, FOR SCHOOL DISTRICT ELECTIONS. — Also contain printed headings, certificates, etc., spaces for 6 candidates, with tally spaces for 300 votes for each candidate. (For the law as to these, see sec. 3917.)

Price, single sheet, 3 cts.; per dozen ..... .25

Envelopes, for Township Election Returns.—Of suitable size, made of strong paper, with blank printed indorsements.

Price, per package of 25 ..... .25

SAME, FOR SCHOOL ELECTION RETURNS—

Price, per package of 25 ..... .20

Annual Statement of Receipts and Expenditures.—We have prepared a suitable blank for posting up, with printed headings and ruled lines, on strong, stiff paper, with two rings for hanging it up at the place of holding elections.

Form A contains ruled lines for 243 items, 30 x 22 inches in size. Price per sheet ..... .12½

RELATING TO CHATTEL MORTGAGES.

Chattel Mortgage Index.

Size A, for recording about 400 (960 names) Mortgages..... $1 50

Size B, for recording about 800 (1900 names) Mortgages.... 3 00

Chattel Mortgage Record.

Printed Form.—This has the form of a Chattel Mortgage printed on the body of the page, and indorsements and cancellations on the margin.

Cap size, 108 printed pages, and 230 pages in blank, full Sheep $5 50

Plain Form.—This is a plain Record Book, with the proper marginal space for entering the affidavits, credits, refiling, etc., with full instructions for its proper use, revised text of the law etc.

Crown Size (15 x 9½), full Sheep, Russia ends and bands.... $2 50

Chattel Mortgage (Common Form).—This form of Chattel Mortgage has been in general use for years. It is accurate, as well as brief and concise.

Price, per quire..... .60

Chattel Mortgage (Long Form).—This form is longer than the Common Form, containing special conditions, by which it is sought to make its provisions more binding.

Price, per quire..... .60

RELATING TO TOWNSHIP CEMETERIES.

The directors of many *cemetery associations* incorporated by special acts of the legislature, were therein authorized to give *certificates of ownership*, signed by the president and secretary, to those purchasing lots, which needed no acknowledgment, etc. But for lots sold in township cemeteries, the township trustees must give *deeds*, which must be recorded by the township clerk, in a book to be provided for that purpose (§ 1467), and there are no statutory provisions exempting such deeds from the necessity of being witnessed, acknowledged, etc.

Deeds for Township Cemetery Lots.—We have had prepared a neat and handsome new form of deed for this purpose, which answers every requirement of the law, and leaves no doubt as to the legality of the title conveyed by it. It is printed on strong vellum paper, with border, proper indorsements, etc.

Price, per quire of 48 deeds..... .75

Record of Township Cemetery Deeds.—We have also printed a book for such records, with index, gilt letter label on back, etc., each page of which contains an exact copy of the deed just described.

Price of book of 250 deeds, substantially bound..... $3 00
Other sizes will be made to order.

OTHER TOWNSHIP BLANKS, ETC.

Bond to Township in Bastardy Cases, per sheet, 5 cts.; per quire of 96 bonds..... .60

Orders of Trustee for Township Funds.

Orders on Tp. Treasurer, per book of 50 orders..... .30
" " " " " " 100 " ..... .50
" " " " " " 200 " 1 00
Separate Fund books, General, Road, and Poor, at same prices.

Trustees' Order to Infirmary Directors to Receive Pauper.

Price, per quire of 48 blanks..... .60
Trustees' Order for Relief of Poor. Blocks of 100..... .35

Orders for School Funds.

Orders on Township Treasurer for Tuition.
" " " " " other than Tuition.
" " Treasurer Special School District.

For the above, per book of 50 orders..... .30
" " 100 " ..... .50
" " 200 " 1 00

Director's Certificate for Teacher's Pay.

Per 100 blanks, neatly blocked..... .35

Director's Certificate for Incidental Expenses.

Per 100 blanks, neatly blocked..... .35

Ditch Blanks, Journals, etc.

SUPERVISOR'S BLANKS.

Certificate or Receipt for Road Tax, per 100 blanks..... .35
Notice to Work upon the Road, per 100 blanks..... .35
Certificate for Timber, Stone, or other Material used, per quire of 96 blanks..... .60
Settlement of Appropriation, blocks of 100..... .60

BLANKS FOR THE USE OF SUPERVISORS.

Abstract of Road Tax. The township clerk must make out and deliver to each Supervisor an *abstract of the amount of road tax* each person in his district is charged with, as soon as he receives from the county auditor a list of the road tax for his township. (§ 4739.)

We sell an abstract, or "tax duplicate," specially prepared for this purpose. It contains ruled columns and printed headings for the names of the tax-payers, for the proper description and amount of each one's property liable to taxation, the total road tax (to be filled in by the clerk): also, ruled columns and printed headings for the amount paid in labor by each one, the amount paid in money, the amount still due, and a column in which to write "paid," as the law requires, opposite the names of those who pay in full, either in money or labor. The columns, "Amount paid in labor," and "Amount paid in money," enable the supervisor readily to keep the account of his receipts in cash, which he must account for on his settlement. It also contains printed instructions, laws, etc., and is well and neatly bound in strong glazed pasteboard covers.

Size A (large enough for 125 names), per copy 10c. per doz. $1.00
Size B (large enough for 325 names), per copy 12c. per doz. $1.20
Cheap edition, without covers, per doz..... .50

Road Supervisor's Report and Settlement. Supervisors must *settle with the trustees* on the first Monday of March each year, and account for or return all plows, tools, etc.; must collect all fines, forfeitures, and penalties accruing under certain provisions of law in their district, and account for the same; must sue all responsible persons refusing to work out their tax, collect the judgments, etc., give a list thereof, report before what magistrate obtained, etc., and account for the money, or give reason why not collected; must expend on their roads all money collected, and account thereof; must return a full and true list of persons ordered out to work, state who worked, who refused, who paid money in lieu of work, etc.; must give a list of unpaid judgments, etc., etc. (See paragraphs 24, 27, 29, 31, 41, 46, 47, 48, 65, 76 to 82, of Chapter II, Manual for Supervisors.)

We furnish a form of Report and Settlement that is just

what the Supervisor needs; and with the assistance of such a form, and of the "Manual," even an uneducated and inexperienced person can readily keep his account straight, and render such a report to the trustees as the law requires.

This "Report and Settlement" is also neatly and well bound in strong glazed pasteboard covers.

Size A (with room for 125 names), price 10c.; per doz., $1.00
Size B (with room for 325 names), price 12c.; per doz., $1.20

Larger sizes furnished, if required, at slight additional cost.

Supervisor's Bond and Oath. We have had a new form of bond prepared to meet the demands of the law as now in force. The supervisor's official oath is printed on the same page, each sheet containing two bonds and two oaths, with proper indorsements for filing, etc. As the law now requires this oath and bond each to be recorded by the township clerk, in the same book, this arrangement will be found the most convenient and desirable.

Price, per sheet, 5 cents; per quire (24 sheets), 75 cents.

A MANUAL FOR ROAD SUPERVISORS IN OHIO.

By Florien Giauque, Author of "A Manual for Guardians and Trustees," "A Manual for Assignees," etc., etc.

Price 25 cents per copy. To Township Trustees at the rate of $2.00 per dozen copies.

NEW REVISED EDITION.

This little book is a real and practical guide to supervisors, telling them in plain language what their duties are and how to do them.

It is much more than a mere reprint of certain sections of the laws of Ohio, though it gives clearly and plainly all of the provisions of these laws which relate in any way to Supervisors, to road work, etc.

It also contains all kinds of forms, needed by Supervisors. Full notes of decisions, showing what the courts have decided about these officers and their duties. Practical suggestions about some things that are not provided for in detail by the laws. Explanations about other matters that these laws do

not make plain and clear. A good, full index to enable any one to find easily and quickly what is in the book.

The township clerk and the trustees each need the book to enable them to see readily what are their duties about Supervisors, roads, and road work.

This book is compactly printed, clearly arranged, well bound, of convenient size for carrying about in the pocket, and, considering its character, amount of matter, etc., is remarkably cheap in price.

A valuable, practical work.—*Tribune and Republic, Portsmouth, Ohio.*

The book should be in the hands of every supervisor.—*Meigs Co. Telegraph.*

It is filled with just such information as all county road supervisors should be in possession of.—*McArthur Enquirer.*

. . . Should be in the hands of every supervisor in the country. It is just such a book as nine out of ten supervisors can not correctly perform their duties without.—*Ross County Register.*

It is not a mere reprint of the road laws, but it strips them of their dry, technical, legal dress, and clothes them in decent English that honest people can understand.—*Cincinnati Commercial.*

A clearly arranged and comprehensive guide for the supervisor, giving him all the information he needs regarding his duties, and forms for preparing his accounts, etc. The work has been very thoroughly and satisfactorily done.—*Cincinnati Gazette.*

PRINTED LETTER HEADS, NOTE HEADS, AND ENVELOPES.

FOR GENERAL TOWNSHIP PURPOSES.

Superior and note-letter paper, with an engraved cut of the coat of arms of the state, and the name of the office on each half sheet, at low prices.

School Register. Containing Annual School Register and Daily Record of Attendance, admirably arranged for Convenience of Teachers and for Filling all the Requirements of the Law. Adopted by the Cincinnati and many other Schools.

Price, 50 cts.; per dozen..... 4 50

If the names of the township officers appear on the headings, it will be necessary to add fifty cents to this scale of prices, as the cost of setting up in each case.

For envelopes, printed, prices range from good manilla at $2.00, to double-thick, extra grade white, canary, or buff envelope, at $3.00 per thousand.

THE LAWS OF ELECTIONS IN OHIO.

Being a Compilation of all the Laws and Constitutional Provisions of the United States, and of the State of Ohio, relating to the Naturalization of Aliens and the Election of National, State, County, Township, Municipal, and School Officers voted for by the Electors of the State. With exhaustive Notes of Decisions of the Courts of the United States, of Ohio, etc., Index, Forms of Poll Books, Tally Sheets, Returns, Certificates of Elections, etc., etc.

New and cheap edition. Published especially for township use. 1 *vol.* 8*vo.* 368 *pages. Paper,* 50 *cents. Sent by mail prepaid on receipt of price.*

Contains more than 260 pages, 6 by 9 inches in size, filled with laws, decisions of United States and States Courts, forms of oaths, election returns, instructions, etc., that every judge and clerk of election, township officer and intelligent citizen ought to know or have at hand, including the laws which the Township Clerk must furnish to the judges of election, with the ballot boxes. See last part of Section 2928, Revised Statutes of Ohio. Get your supply for the coming elections.

The decisions referred to are scattered through series of reports, law magazines, and other periodicals, consisting of hundreds of volumes, to which few persons out of reach of large public law libraries have access, and even to those who have, it is always a matter of inconvenience, and often of immense labor, to hunt up all the authorities on any given point. And, besides, there are many persons who are interested in these matters to whom even the full volumes of statutes are not accessible.

The Revised Statutes of Ohio, 1880, contain the following provision: "Every such clerk [meaning each township and corporation clerk] shall cause a ballot box with a copy of this title [meaning the title relating to elections, embodied in this book] to be delivered at each place of holding elections in his township or corporation, as often as elections are held therein; and after each election the same shall be forthwith returned to him by the judges of election for sake keeping." (Sec. 2928.)

FOR SCHOOLS.

BOOKS, BLANKS, RECORDS, ETC., FOR CITY, VILLAGE, AND SPECIAL SCHOOL DISTRICTS.

(*Send for descriptive circular.*)

Official Bonds and Oaths.—Each Clerk and Treasurer of the Board of Education must give a bond and take an oath of office.

We have just had prepared the following, in conformity with the Revised Statutes:

Bond and oath of Treasurer of Board.
Bond and oath of Clerk of Board.

Price per sheet (2 bonds and oaths), 5 cts.; per quire (48)... .75

Record of Bonds and Oaths.—The law provides that the officer with whom these bonds are filed must record them in a book kept for that purpose.

We have prepared a convenient book, each page of which contains a printed form of bond and oath, so that a bond and oath can be recorded by simply filling in a few words on this printed page. This book is well bound, of convenient size, with proper label on the back.

Price, cap size, containing 250 bonds..... $3 00
Price, cap size (80 bonds)..... 1 00

Notices of Election must be posted in several of the most public places in the district. We have blanks admirably adapted for this purpose, for the various kinds of districts.

Price, per quire of 96 blanks..... .60

Poll Books.—We have just printed a poll book specially designed for school elections, containing printed forms of oaths, certificates, full instructions, etc.

Price, per book for 150 names, 5 cts.; per dozen ..... .40
" " " " 350 " 6 " " " ..... .50
" " " " 750 " 10 " " " 1 00

Poll books for more names, if desired, at slight advance over above prices.

Improved Poll Book and Tally Sheet combined, adopted by the Board of Elections of Cincinnati. Per book (300 names), 10 cts.; per dozen... ..... 1 00

Tally Sheets.—We have also just printed tally sheets specially

for school elections, with printed headings, certificates, ruled lines, etc.

Price per sheet, with room for 6 candidates, and 300 votes, for each, 3 cts.; per dozen ..... .25

Do., with room for 37 candidates and 400 votes, for each, per sheet, 5 cts.; per dozen ..... .50

Envelopes for Election Returns.—With printed indorsements, instructions, etc.

Per package of 25 ..... .20

Certificates of Election.—To notify successful candidate of his election, with coat of arms of Ohio, neat border, instructions for making out, etc.

Price per sheet, 5 cts.; per dozen ..... .35

Annual Statement of Receipts and Expenditures.—We have prepared two suitable blanks for posting up, as required by law, with printed headings, and ruled lines, on strong, stiff paper, with two rings on each sheet, for hanging it up at the place of holding elections.

FORM A.—Contains ruled lines for 339 items, 30 x 22 inches in size.

Price, per sheet ..... .12½

FORM B.—For the use of districts not needing so many items stated, on the same sized sheet, with rings for hanging, but so ruled as to give more room for each item, this latter form containing spaces for only 126 items.

Price, per sheet ..... .12½

Minute Books.—We have different sizes of blank books specially adapted for this purpose, well bound, well made, and of good material, properly labeled, and of uniform appearance with our other books for clerk's use.

Demy size (16 x 11), bound in Sheep, with Russia ends and bands, 350 pages $3 50

Crown size (14 x 9½), bound in Sheep, with Russia ends and bands, 350 pages..... 2 50

Cap size (13 x 8½), bound in full Sheep, 300 pages..... 2 00

Cap size (13 x 8½), Sheep back and corners, 250 pages..... 1 25

Record of School Funds.—Sec. 4055 provides that the clerk and treasurer shall each keep an account of the school funds of his district; that a separate account shall be kept with each fund, and otherwise directs as to the form of these books, and how they shall be kept.

We publish a book to meet the requirements of the section last mentioned, with printed headings and ruled columns, for the separate accounts, making it a very easy matter to keep these books as the law requires.

It has received the approval of the Commissioner of Schools.

In ordering, specify for what kind of districts the books are wanted.

Cap size, strongly bound..... $2 50

Cap size, Sheep back, 120 pages (cheaper and smaller book)..... 1 25

Bonds, with Coupons attached, issued by Boards of Education for building and other purposes.

Per dozen..... $2 00

Orders on Treasurer, etc.—We have blank orders for the payment of teachers' salaries and other expenses, bound into books of various sizes, each order having its own stub, on which to retain a memorandum describing the order given out.

Orders on Treasurer for Tuition.

Orders on Treasurer for other than Tuition.

For book of 200 orders..... $1 00

" " 300 " 1 50

" " 600 " 3 50

Monthly Report for Grade.—Report of Teacher to Principal.

Cap size, per quire..... .75

Report of Enrollment and Attendance.—Report of Principal to Clerk.

Per quire..... .75

Report of Teacher to Parent, 100 cards..... .50

Almost all of the foregoing records, dockets, indexes, blanks, etc., have been prepared for us by Florien Giauque, editor of "*Raff's Guide*,," etc., and all of them relating to schools have been approved by the State Commissioner of Common Schools.

We keep constantly on hand blank books of all sizes and styles, and also legal cap, foolscap, letter, and note paper, all kinds and sizes of envelopes, ink, and every kind of stationery, which we will sell at regular market rates. We are also thoroughly prepared to do any printing, binding, etc., in the best manner, on short notice, and at reasonable prices for good work.

We shall be pleased to receive orders, however small, for any of the above blanks, records, etc., believing that they will meet with the approval of all who examine them. The printed blanks will be sent by mail, postage paid, on receipt of price. The books and records, where the order amounts to $5.00 or over, will be sent to your nearest express station, transportation charges paid by us.

STAMP FOR MARKING BOOKS, BLANKS, ETC.

Stamp furnished to order, containing not over fifteen words, with pads and bottle of ink, in box, complete..... $1 50

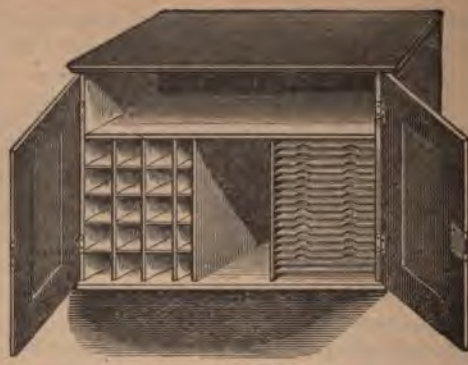
OFFICE CASES FOR BOOKS, BLANKS, ETC.

Especially adapted for the use of Township Clerks, Justices of the Peace, and other Public Offices, etc. Would soon save their cost, by preventing books, blanks, and important papers from getting lost worn out, torn, dirty, to say nothing of time saved.

These cases are *well* made of the best seasoned black walnut lumber (inside shelves poplar), and are highly finished.

No. 1. *Price* $5.00.

The small case (No. 1) is meant only for keeping blanks, but is very convenient and desirable for that purpose. It is 21 inches high, 14½ inches deep, and 9½ inches wide, inside measurement, and has sliding shelves.



No. 2. Price, $12.00.

No. 2 is 33 inches high, 40 inches wide, has one shelf for books, 15 pigeon holes, and 14 shelves for blanks.

No. 3. Price, $15.00.

No. 3 is 51 inches high, 40 inches wide, and 12½ inches deep, inside measurement; has 2 shelves for books, 24 pigeon holes, 20 shelves for blanks, 14½ inches long, 9 inches deep, with a space of ⅜ of an inch between each one, in which to keep blanks, blank paper, etc.; shelves are neatly fitted into grooves, can be taken out for any purpose desired, as for cleaning, etc. The central space accommodates records, dockets, etc., of the largest size in use. The space below, 6 inches high, gives room for the ink bottle, pens, ruler, etc.

JUSTICES' CIVIL DOCKETS.

OUR COPYRIGHT FORMS THE BEST IN THE MARKET.

Fees allowed by law for each and every service printed (in figures) in full, on every page.

Cap size (9 x 14).

3 quire book,	bound in half russia, cloth sides		$3 75
4 "	"	substantially bound in full sheep	7 00
6 "	"	" " "	9 00
6 "	"	with russia ends and bands	11 00
8 "	"	substantially bound in full sheep	10 00
8 "	"	with russia ends and bands	12 00

Demy size (11½ x 17).

4 quire book,	substantially bound in full sheep		$9 00
6 "	"	" " "	12 00
6 "	"	with russia ends and bands	13 50
8 "	"	substantially bound in full sheep	14 00
8 "	"	with russia ends and bands	16 00

Every Justice entitled to a Civil Docket.

"Every Justice of the Peace must keep a book denominated a Docket, which shall be furnished by the trustees of the proper township."—*Sec.* 594 *Revised Statutes of Ohio.*

JUSTICES' CRIMINAL DOCKETS.

Crown size (10 x 15).

3 quire book,	bound in half russia, cloth sides		$3 75
4 "	"	substantially bound in full sheep	7 00
6 "	"	" " "	9 00

Demy size (11½ x 17).

4 quire book,	substantially bound in full sheep		$9 00
6 "	"	" " "	12 00
6 "	"	with russia ends and bands	13 50
8 "	"	full sheep	14 00
8 "	"	russia ends and bands	16 00

Special Printed Headings.

The name of the *County* will be printed in any of these dockets, at an extra cost of $1.50.

"Each justice may retain, of any fines or other moneys belonging to the county that come into his hands in criminal proceedings, the amount paid for a criminal docket, returning his receipt instead of the money; but dockets received from a predecessor, *if suitable,* shall be used for entries in criminal causes so far as they have blank leaves."—*Sec.* 613 *Rev. Stat. of Ohio.* See also § 611.

SIXTH EDITION, 1889.

PECK'S TOWNSHIP OFFICERS' GUIDE.

Revised, Enlarged, and Rewritten.

Being a Manual of the Law governing Township and Town Officers in Ohio, setting forth the statutes relating to the same, with numerous Forms and Annotations of Decisions. Sixth edition. By HIRAM D. PECK.

12mo. Price, $2.00. Sent prepaid on receipt of price.

No work of this character has ever been received with greater favor by the persons for whom it was intended than Judge Peck's useful "Guide for Township Officers." Its compact form, simple style, thurough collation of the law, convenient blank forms, and suggestions, rendered it invaluable to Township Officers.

This new sixth edition has been in preparation for some time; much careful revision has been found necessary on account of many important changes made in the laws, and much new and valuable matter has been added. Notes of all published decisions of the Courts of the State, made since the time when the original edition was issued and also additional forms and other matter calculated to render it more complete and perfect than ever, have been added.

The work is designed to meet a want long felt and frequently expressed. It sets forth in convenient shape the laws relating to all the powers and duties of township officers, with such forms and in such clear and direct style as to enable those officers, and all persons having official or business relations with the township, to find out with facility the law by which they are to be governed.

While intended primarily for township officers, care has been taken by annotating decisions and furnishing references to statutes, to render the work useful to the legal profession and others who may have occasion to consult its pages.

It will be found to contain the law relating to *Townships, Township Schools and Roads, Elections, the Relief of the Poor*, the recent and important *Ditch Laws*, and many other topics of a similar nature.

It contains a complete summary of the law prescribing the duties of

TOWNSHIP TRUSTEES, TOWNSHIP CLERKS,
TOWNSHIP TREASURERS, SUPERVISORS OF ROADS,
TOWNSHIP BOARDS OF EDUCATION AND SCHOOL DIRECTORS,

Together with such portions of the law relating to the powers and duties of Justices of the Peace, Constables, and Assessors, as connect them directly with other Township officers.

FORMS

Have been inserted at every step where they are deemed useful or necessary, and the aim has been to render them at once clear, simple, and sufficient in point of law.

Notes of all important decisions of the Courts of this State, upon the topics discussed, are inserted in their proper place.

THE INDEX

Is analytical, full, and complete, and intended to be so arranged that any portion of the work may be referred to with facility and precision.

The following are the principal topics of the work:

Apprentices, Assessors, Bastards, Cemeteries, Constables, Clerk of Township,
Ditches, Drains, and Water-courses, Elections, Fences, and Inclosures,
Jurors, Justices of the Peace, Township Libraries, Chattel Mortgages,
Relief of the Poor, Roads, Supervisors of Roads, Strays,
School Districts, School Boards, Schools, Townships,
Township Halls, Township Trustees, Township Treasurers,
Village School Districts, etc., etc.

SPECIAL RATES TO TOWNSHIP TRUSTEES.

Three copies, ...	$5 00
Five copies (one for each Trustee, Clerk, and Treasurer),	8 00

GIAUQUE'S ROAD LAWS.

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